IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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RICHARD COOEY, ET AL., :
:
plaintiffs, : HIGHLY CONFIDENTIAL
:
vs. : Case No. 2:04-CV-1156
:
TED STRICKLAND, ET AL., :
:
defendants. :

- - -

Deposition of WARDEN PHILLIP KERNS,a witness, called by the plaintiffs under the applicable Ohio Rules of Civil Procedure, taken before Jennifer L. Berry, a notary public in and for the State of Ohio, pursuant to notice and stipulations of counsel hereinafter set forth, at the Southern Ohio Correctional Facility, Lucasville, Ohio, commencing on Friday, October 2, 2009, at 3:51 p.m.

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FRIDAY AFTERNOON SESSION
October 2, 2009
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STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of WARDEN PHILLIP KERNS, a witness, called by the plaintiffs under the applicable Ohio Rules of Civil Procedure, may be taken at this time in stenotype by the notary; that said deposition may thereafter be transcribed by the notary out of the presence of the witness; that proof of the official character and qualification of the notary is waived; that the examination, reading and signature of the witness to the transcript of his deposition are expressly waived by counsel and the witness; said deposition to have the same force and effect as though signed by the witness.

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WARDEN PHILLIP KERNS
being by me first duly sworn, as hereinafter certified, deposes and says as follows:
EXAMINATION
BY MR. BOHNERT:
Q Good afternoon, sir.
A Good afternoon.
Q You probably don't remember, but my name is Alan Bohnert. I am from the Federal Defender's Office. I represent one client in this particular case. With me is Mr. Tim Sweeney, who also represents some clients in this case.
I guess before we get started, if we could have you just state your name for the record?
A My name is Phillip Kerns, spelled with two Ls.
Q And you are the Warden at the Southern Ohio Correctional Facility; correct?
A Yes.
MR. BOHNERT: I guess, also, let's let the record reflect that counsel are in agreement about the usual stipulations that we have used for this series of depositions.
MR. WILLE: So agree.
MR. BOHNERT: And, also, I

just need to put on the record, we will use the same stipulations for Nurse Clagg and for Team Member 21's deposition, as well.

MR. WILLE: Yes.

MR. BOHNERT: I don't know if we have that on the record, so we will just take care of that.

Actually, can we go off the record for a moment.

(Discussions were had off the record.)

MR. BOHNERT: We will go back on the record. At this point I need to make a note for the record. At Page RB-474 in Deposition Exhibit No. 76, this particular page was a document that was produced -- this page and the following page, RB-475, are documents that were produced by the defendants to the plaintiffs in response to discovery request. Included in those discovery requests was information about witnesses from the media who were present during the September 15, 2009, Romell Broom scheduled execution date.

This document -- the defendants will stipulate that this document as RB-474 reflects the media witnesses who would have been or were

possibly present for the 9/15/2009 Broom execution attempt. But defendants also stipulate that this particular document was generated by a Mr. Larry Green on September 22, 2009, as reflected in the lower right-hand corner, at 9:09 AM, and that it was not generated before the September 15th, 2009, Broom execution scheduled date. Is that accurate?

MR. WILLE: Yes. That is correct. Also, if you would like, we can actually stipulate to the media witnesses who actually would have witnessed the execution.

MR. BOHNERT: Okay. Is there a difference between witness and present? I am not quite sure on that.

MR. WILLE: Yes. This document --

MR. BOHNERT: Can we do both and just designate who witnessed, actually observed, and who was present but did not witness?

MR. WILLE: Yes. The document indicates all of the media representatives who were given authorization.

It's our understanding that the four media witnesses who were actually designated to be witnesses to the actual execution were Jon Craig, Stephen Majors, Peter Krouse and Tracy Carloss. I believe those names are on this document that is the exhibit.

MR. BOHNERT: Okay. And so those four individuals did actually witness the execution attempt or at least the proceedings that occurred on September 15, 2009?

MR. WILLE: Yes.

Q (By Mr. Bohnert) All right. Warden Kerns, I guess we have already had you identify yourself, and just bear with me. There is just real basic boilerplate stuff that I have to go through with you. You are here to give a deposition today; you understand that?
A Yes.
Q You understand that we have a Court Order protecting the anonymity of the team members; correct?
A Yes.
Q And so I will do my best to not reference anything as far as information on those team members. You understand that?

A Yes.
Q Okay. So if I ask anything about team members, just know I don't want any names, I don't want any identifying information, I just want, you know, reference to numbers. Mr. Wille has the list of -- the list that was provided to the District Court. So if there is any question, doublecheck on the list and keep the anonymity; okay?
A Yes.
Q Now you are represented here today by Mr. Wille of the Attorney General's office; correct?
A Yes.
Q And you have given a deposition in this case before; right?
A Yes.
Q As a matter of fact, I think I even had the privilege of deposing you the last time around; is that right?
A Yes.
Q Kind of the same thing. If you don't understand a question, let me know and I will rephrase it; okay?
A Yes.
Q And, also, you know, if -- for the Court

Reporter's sake, if you could give a verbal answer to everything rather than a gesture or a nod, if that's okay for you?
A **Will do.**
Q I know you're a busy man. And so if you need to take a break at any point, just let us know. I just ask that you don't take a break while a question is pending. If I ask a question, finish it and then say, hey, I need to take a break or something like that; okay?
A **Okay.**
Q It is also important that we don't try to talk over each other, so let me finish a question and also so that you are totally clear on what it is I am asking; okay?
A **Yes.**
Q Have you done anything to prepare for the deposition today?
A **Pulled the policy out and looked at it again, and a couple of e-mails, probably.**
Q The policy, you are referring to the May 14th, 2009, execution policy or protocol; correct?
A **Yes.**
Q Okay. And you said a couple of e-mails. What do you mean by that?

A **I have got a couple of e-mails here. My secretary said there was a typo on the checklist on pancuronium bromide.**
Q Okay.
A **That instead of being 2, they typed 3. I have already sent e-mails to have them correct that on that form. And I have got an acknowledgement back from our past I guess you would call it Bureau of Inspections or Bureau of Audits, the person that would pick the adjustment up for them. I already got an e-mail back from her. She was the previous inspector. The other inspector is out on vacation today. And she already e-mailed me back saying they will go ahead and fix that. So I guess there is a typo, and so that has been taken care of. I brought the e-mail to show that it has already been acknowledged.**
Q Now, when you talk about the checklist, are you referring to -- see which page is it -- one second here. I want to make sure I get the right number. If you look at RB-53, Deposition Exhibit 76, it would be right near the front, Page 53.
You are looking at RB-000053; correct?

A **Yes.**
Q And that's the -- that document is what you are referring to as the checklist?
A **Yes.**
Q Now, I notice in the documents that the attorney general's office produced to us, that this is now -- well, in the documents that we got, it came directly after Page 10 of the written policy, the execution policy. Is it my understanding that this document, the execution equipment room and execution checklist as it is now configured on Page RB-53 is actually considered part of the protocol?
A **Yes.**
Q So that would explain its proximity to the other 10 pages?
A **Yes.**
Q Can you -- I guess we haven't seen the e-mails that you sent.
A **Okay. Is that -- I have got them here. You are welcome to look at them, if you like.**
Q I want to clarify what -- you said there was a typo in here that was going to be changed. Can you explain that for us?
A **Yes. Where you look under syringes, look down**

where it says -- the second box down, it says 3 and 4, 100 milligrams pancuronium bromide, 3 milligrams, or ML, concentrate. That should have read 2 instead of 3. It's is a typo.
So the e-mails I sent are already to Columbus, to the folks that rewrite the policies for us or make corrections. That has already been sent and it has been acknowledged that she received it, and I will make that correction right away.
Q Is the typo just on the checklist document?
A **Yes.**
Q And is that 3 milligrams per I guess milliliter concentration for pancuronium bromide? Is that 3 milligram concentration typed anywhere else in any of the other documents related to the execution process?
A **No. It was typed on this form here, and I am thinking somebody just made an error when they were typing. And so that's why I sent these e-mails to have it corrected.**
Q Would it be fair to say this a checklist reflecting 3 milligram per milliliter concentration of pancuronium bromide has been used for previous executions, however?

A I don't think it was during my time, but it could have been. I don't know.
Q Okay. I think Chuck already has Exhibit 73 over there. Do you recognize Exhibit 73?
A Yes.
Q And would it be accurate to say that this particular document represents the immediately previous version of the equipment room and execution checklist?
A Yes.
Q So is it fair to say, also, that this is the document that was used for the execution team to follow in the Getsy execution?
A Yes.
Q And, also, for the -- well, Getsy, and before that was Keene, I believe?
A Yes.
Q I am getting my numbers mixed up here.
A Yes.
Q Keene. And it would have been used for Keene?
A Yes.
Q And it also would have been used for Fautenberry?
A Yes.
Q And also for Wilson before that?

A I don't know about Wilson. I know we used this three times. This form -- this is actually a form we made up. So the typo happened here, obviously.
Q Okay.
A And it was sent north and they typed it probably exactly the way we had it typed.
Q Okay.
A That's what I am going to guess. I don't think it was used prior to Fautenberry. It may have been. We wanted to look at it and make sure it was exactly what we said we were doing, and once we were comfortable with the form then go ahead and get it published into form, actually with a DRC form number on it like the new one.
Q Okay. So when you say the new one, you are talking about the one that's on Page 53 of Exhibit 76; right?
A That's correct. I think in my last deposition I talked about that, that we were going to have that put in an actual DRC form number, and that's what we've done.
Q This document now on Page 53 -- this is actually -- I mean, how would you -- is this actually formally now part of the written

policy?
A Yes. If you look down at the very bottom left-hand corner of RB-53, it says DRC4081-dash -- or it has got August of '09 was when it was developed.
Q Okay.
A If it's updated, like if they correct this here, it will say probably October of '09, an update or revised.
Q 10-slash-09?
A Yes.
Q Okay.
A So once they make that revision, they will make that here, but I think the new policy refers to it. So May of '05 policy ,I don't think it actually refers to that policy number. But this next revision, when the policy comes out, will incorporate that form number, but now it is a part of that process.
Q Okay.
A We usually update the policies once a year unless there is a need to go back and make an update on something. Then at that point in time then the policy is updated, any forms are added to it.

Q So just so I am clear, you are saying that assuming that there is a new version or a new written, you know, execution policy, which is I guess document -- or starting on Page RB-43 --
A Okay.
Q Right? You are at RB- 43?
A Yes.
Q So this is No. 01-CON-11; right?
A Yes.
Q So this is the current execution policy; is that correct?
A That's correct.
Q So you are saying sometime in the next year there will probably be another promulgation of this policy, and at that time then that written policy will formally incorporate, like on the last page, will formally incorporate DRC4081?
A That's correct. When we make the update, then they will also include the form number that accompanies this particular policy.
Q Like down there on the last page where it says related department forms --
A That's correct.
Q You will just add another DRC4081; right?
A Yes, that will be the attachment that will go

with it.
Q Okay. All right. Have you discussed the -- you said you had reviewed the policy -- pulled out the policy and you had reviewed that to prepare for the deposition today; right?
A (The witness nodded affirmatively.)
Q And, also, the e-mails about the typo and that kind of thing?
A Right.
Q All right. Have you done anything else to prepare for the deposition today?
A Mr. Wille and I talked just briefly a couple of days ago. That was it.
Q Was that back on Monday, the 28th?
A I believe it was.
Q Okay. Following the rehearsal for the upcoming Reynolds execution?
A Yes. I think most of that was about scheduling and so on, and the mechanics of how we were going to do this. It wasn't really about -- related to this.
MR. BOHNERT: Okay. He said it. I didn't ask.
MR. WILLE: You didn't ask. That's okay.

Q (By Mr. Bohnert) Did you have any discussions with anyone else other than Mr. Wille about --
A No.
Q Did you talk to Director Collins at all?
A No.
Q Nothing talked about with Greg Trout?
A No.
Q You kind of hesitated?
A Well, let me revise that. Monday, we talked Monday.
Q When you say "we," who do you mean?
A Actually, Greg and I talked Monday.
Q Privately?
A No. No. Just down here. We had a conversation, but it wasn't about this deposition.
Q Okay. Let's see. Help me understand the scene on September 14, 2009, just a couple of weeks ago, the day before the scheduled Broom execution.
Mr. Broom arrived with your transport team from OSP at, say, I think it was approximately 9 o'clock, 9:30 AM that day; is that right?
A Yes.

Q Were you around when that arrival occurred?
A I was here in the institution.
Q Okay. Did you meet the van or anything like that?
A No.
Q Okay. When was the first time that you had any kind of interaction or any kind of contact with Mr. Broom?
A I am going to -- this is just a guesstimate, but I am going to say probably around 1, 1:30, maybe 2 o'clock. We had ACA audit going on at the same time, and so --
Q American Corrections Association, I presume?
A Yes. And so I was busy in and out with that, also. So I think it was probably between 1 and 2 when I actually went over.
Q Okay. Had you discussed anything about Mr. Broom with any of your team members or anything at that point?
A No.
Q Okay. So you didn't hear of any potential problems that might have been noted at that point?
A No.
Q Kind of describe to me -- describe for me what

you did the rest of the day in relation to Mr. Broom. The rest of that day, the 14th.
A I think I was over there twice to the Death House. And the first time, like I said, it was around 1 to 2. And, again, I think it was early evening I was over there. It might have been 4:30 or 5, a short period of time on both occasions, and I was back over here again.
Q Okay. And were those individual conversations private between you and Mr. Broom or was anyone else present, as well?
A No. The first time I just said "hi" to him, acknowledged him and so on. And the second time I had no conversation with him at all.
Q Okay. Now, if I recall correctly, you became the Warden here at SOCF sometime rather recently; correct?
A March of '08.
Q Okay. And forgive me, because I don't remember, but were you here in any capacity back when Mr. Broom was also an inmate here?
A No.
Q Not also, but when Mr. Broom was an inmate here?
A No, I wasn't.

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Q You had never met Mr. Broom before that, before the 14th?
A **No, I had not.**
Q So you had two interactions with Mr. Broom on the 14th?
A **One interaction, speaking, just speaking to him. That was it.**
Q Okay. At any point during the rest of that day on the 14th did anybody talk to you about possible complications that might occur the next day during the attempted execution?
A **No.**
Q So No. 10 never brought it to your attention that there were possible --
A **Let me see the list.**
Q The Major, the Team Leader.
A **No, I don't recall him saying anything about any possible problems.**
Q Okay. We also have had some kind of reports that some members of the media were informed that there was -- some members of the media were informed that prison officials thought there might be a problem with the left arm on Mr. Broom. Do you have any knowledge of that particular exchange?

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A **No.**
Q So the next day, September 15, the date of the execution, scheduled execution, kind of describe for us in what -- how your day started then on that day?
A **Well, I think that there was a last second appeal that he was waiting to hear about, and I think the news was they denied his appeal, if I recall correctly.**
Then normal time we would go over to the Death House, probably 9:15 or so, went to the Death House. Victim witnesses, inmate witnesses, if there were any, were escorted over. I read the death warrant. After reading the death warrant, then the medical team went in to start the IV insert. And at that point in time --
Q Now I am confused. You said this was about 9:30?
A **9:30 to 9:45, in that time frame is when the process started.**
Actually, no, it wasn't. It was more around 11 because we had to wait until -- we were like delayed two hours, come to think of it.

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Q That's why I was confused.
A **Our normal time would be 9:30, 9:45. This one we waited until almost noon until we actually got the go-ahead. And so after that we went over and we went over the normal process that we do, as far as reading the death warrant, and the team would come in and do an IV insert. This one was delayed somewhat and then we started that process, the IV insert, after the death warrant was read.**
Q Let me ask you this. At what point were people made aware that there was going to be a delay?
A **I think as soon as we found out, and that was early in the morning. I'm going to say we knew pretty much at 8:30, 9 o'clock, that we were going to wait until we got an answer of whether we were going to go ahead or not.**
Q You think it was around 8:30 or so that you got notice that there was going to be a delay?
A **I think it was probably -- we were waiting before that. We knew that there was a delay. We didn't want to move ahead until we got an answer.**
Q So if you had to kind of narrow it down, my question is at what point did you first know

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that there was to be a delay? Not, you know, 9 o'clock and we are going to just hold.
At what point that morning? I mean, was it a 2 AM notice or a 7 AM? When did that come across?
A **I think the Director got here probably 7:30, 8 o'clock, in that time frame, in that half hour.**
Q Okay.
A **And I knew at that point that we were on hold until we actually got the okay to move ahead, or that his appeal was denied. And we are not going to start until we hear from them anyway.**
So we waited until the normal time and we didn't hear, so we told the team, "It is delayed for now, we will let you know when we are going to move ahead." And it was sometime later that morning when we told them that we are going to move ahead.
Q Let me make sure I understand you correctly. You learned from the Director, Director Collins, at about 8 o'clock that this one is going to be delayed because he has got appeals pending; is that correct?
A **That's correct.**

Q At what point in time did you convey that information that it was going to be delayed to anyone else, like the Major or anyone else?
A I think that -- I think we relayed the information to our command post over here and it was relayed to the Major that it was going to be delayed. Probably around 9:15.
Q Okay.
A Just a guesstimate, but I think it was around 9:15.
Q Okay. So we have had the delay, you get word from someone -- I guess, I mean, who told you that it is all clear, we are good to go? Do you remember?
A Actually, I think that was -- that message was given to the Director, as I understand it.
Q Okay. And then he conveyed it to you?
A Yes.
Q So you don't know who conveyed that?
A No idea.
Q Okay. So that message came in about what time?
A I'm going to -- I'm guessing if I tell you, but I think it was probably around 11, 11:15.
Q Okay. So then you then go to the team and tell them everything is clear, no more appeals, and

we are going to move forward; right?
A That's right.
Q And then if I understand correctly, it was about two o'clock or so when you actually started the process and went to the cell with the death warrant and had your security team members there; is that correct?
A That's correct.
Q So you read the death warrant, standing in the doorway; is that right?
A Yes.
Q And then I guess just briefly describe for me what you did.
A At that point after the death warrant is read, I back away from the cell a little bit, and then the medical team goes in and the inmate lays down on the bed and they start working to get an IV site established.
Q Okay. And what were you doing at that point in time?
A After they were in there, I walked back up and was watching the attempts there probably for the first 10 minutes or so.
Q When you say "walked back up," I think you have got a map there somewhere. I think you have

actually got our map, the map of the --
A (Witness indicating).
Q Yeah, schematic, blueprint of the Death House. When you say you walked back up, what do you mean by that?
A Okay. The holding cell, where the inmate would stay, it is in the upper left-hand corner of this map. When I say "walk back up," I probably step back four feet or so when the medical staff went in.
Q Okay.
A After they were in and situated, I stepped back up to the doorway to watch how things were going.
Q Okay. So "step up" means that you move back to where you were by the holding cell?
A That's correct.
Q So you could see everything that was going on?
A Yes.
Q I guess we will fast forward here, because after three days I think we have a fairly good idea of what was going on in the cell at that point.
You know, can you describe for me what you were thinking? You said you were standing

there for about 10 minutes watching the attempts to establish an IV access; right?
A Yes.
Q What were you thinking during that point in time?
A It may have been a little more than 10 minutes, but the staff was working very hard to get an IV. We actually hit the veins, and as soon as we would start a saline drip the vein would bulge. You would see swelling in the vein so you can't use it, you have to make another attempt.
In that 10 to 15 minutes there was multiple attempts. I will say six or seven, maybe, in that 10 or 15 minutes. I don't know the exact number. I wasn't really counting, just looking at the situation. Every time they made an attempt things just wouldn't hold.
Q Okay.
A And so our staff, one of the team members -- and you could tell that it was getting physically warm from him making the attempts and so on, so we switched out one member to another member to give that person a break.
Q Now, when you say you switched out, what do you

mean by that?
A **Do you have a list? I can give you the number.**
Q We have got 17 is the person who typically administers the drugs, the EMT-Intermediate; 21, we will call him the new guy; and No. 9 is the female phlebotomist.
A **No. 9 got a little warm and you could tell that she needed a break.**
Q This is about 15 minutes in?
A **Probably 15 minutes into it.**
Q Okay.
A **And then after that -- let me give you the number here so we have this. Then Team Member No. 17 went in and he took over at that point and made several attempts, also.**
Q Okay.
A **With the same results.**
Q Okay. Now a couple of things. One, I just want to clarify. You said you could see the vein bulging when the needles were in. Is that something that you personally saw the veins bulging, or that's your kind of understanding of what was going on?
A **I couldn't see it on -- I couldn't see it on his right arm.**

Q Okay.
A **But on his left arm, because of where I was standing, where I was standing and the position he was laying, I could see it on the left arm when they did the saline drip. You could see it start rising, and the medical team there said, "That won't work, we have to try another site."**
Q When you say the medical team, you are talking about No. 9; right?
A **Yes.**
Q Is that a direct quote? She said, "That won't work"?
A **On that site there, that's not working. We had the same thing with another team member, another team member.**
Q No. 21, on the other side
A **No, they were still on the same, on the left arm.**
Q 17?
A **Yes. He tried and got a vein and saline drip, and it started swelling and not a good vein, so he had to try another one.**
Q Okay.
A **Like I say, I was there for about 15 minutes**

during that process. Because they spent as much time looking -- probably more time looking than they did actually doing the IV stick, looking for a good vein or one that was rose up enough that looked like it would hold or so on. They did a lot of searching, even used a vein light to locate veins so they can see exactly where they were at.
Q So you are saying for the first 15 minutes, approximate 15 minutes, you were watching this unfold?
A **Probably pretty close.**
Q Do you remember No. 9 saying anything when she -- you know, you said you saw her visibly getting to the point where she needed a break. Would that be accurate?
A **Yes.**
Q Do you remember her saying anything?
A **No. She was just -- she was just hot because the room was warm. She had a lab coat on and she had been -- she was looking at working to finding a vein, patting and looking for it.**
Q Did you say anything to her?
A **Yeah. I told her to take a break and let somebody else step in and let them try it, you**

know. So we -- we had her take a break and get a glass of water and cool down a little bit.
Q So that decision to send 17 in or to have 17 go in, that was at your instigation; is that what you are saying?
A **We just -- we saw that she needed a break. Once she broke, I told No. 17, "Why don't you give it an attempt."**
Q When you say "we" -- for clarification, you say "we" saw her, that she needed a break.
A **Actually, he used to be the Warden here, Warden Voorhies when he was here. Now he's the South Regional Director. He was also standing there.**
Q Right next to you?
A **Right next to me. He and I were both watching. He and I both said the same thing, "It is time for you to take a break."**
I said to No. 17, "Why don't you go ahead and try to give this a try."
Q Regional Director Voorhies was standing shoulder to shoulder with you?
A **He was on my left and we were standing right there together by the cell door.**
Q Okay. Approximately how far was the distance from where you were standing to where No. 9

was working on the left arm?
A Two feet.
Q So 17 goes in, No. 9 goes out. Did you have any conversations with 9 when she came out? She came out by herself; is that correct?
A That's correct.
Q While she was out, No. 17 was in the room; correct?
A That is correct.
Q And while that was happening, 21 was still making attempts on the right arm; is that right?
A Yes.
Q So No. 9 was out there by herself, you said, getting a drink of water?
A South Regional Director Voorhies went with her, got her a drink of water and had her sit down for a few minutes to cool down. He was talking with her. I don't know what they were talking about, but he was talking with her.
Q You anticipated my next question. I guess that was going to be -- do you know -- did she say anything when she was out there that you recall?
A I just know we were concerned about getting her

cooled down. We didn't want her to have a problem from being overheated or whatever.
Q Okay. And how long would you say that that scenario was the case, where she was out of the room, 17 and 21 were in the room making attempts.
A I am going -- I am going to -- I didn't really time it, but I'm going to guesstimate it to be 25 minutes or so.
Q Okay. So now we are at 15 plus another 25, you mean?
A I am thinking, we took a break. There was one point where we wanted to take a break. I don't know if we were 40 minutes into it from the start to there, or if we were 30 minutes in from the start to there. But it didn't seem that we were getting a viable vein, and that was pretty apparent, and we wanted to go and take a break.
Broom wanted to continue on. And we said, "No, we need to take a break. You need to take a break, we need to take a break, sit up, if you want a drink of water or water, whatever, relax, go ahead and sit up. We need to talk for a few minutes."

Q Okay. At that point you say that's approximately 45 minutes, then you say, "We need to take a break"?
A Yes.
Q At that point who did you have exit the room; do you remember?
A At that point in time I think all -- I think 21 and 17 came out of the room, and also No. 10.
Q Okay.
A And we went back and away from the inmate, away from Inmate Broom, went back in an area where it's -- another area where they sit back there when they are on relief or whatever.
Q Is that J-1, I think it has been referred to?
A Yes. We went back there and talked about what was going on.
Q When you say "we"?
A The three team members I mentioned earlier, plus No. 10. Medical Team Member 10 and myself.
Q And?
A And the Director.
Q So Director Collins was there at that point?
A Yes.
Q Was Mr. Voorhies also there at that point?

A Yes.
Q Anybody else?
A No, not at that point.
Q Was Nurse Clagg there, as well?
A No, I don't think she was actually in that first -- we met several times. I don't think she was in that first one. I don't recall her being there.
Q So this first meeting with you, Director Collins, Mr. Voorhies and the three team members, three medical team members, and No. 10 -- do I have that attendance role right?
A Yes.
Q You are saying that that happened approximately 45 minutes into the start of the process, or into the process; right?
A That's an approximation, but that's correct.
Q Okay. Tell me what was discussed or what was said during that particular conversation.
A What we were discussing is we wanted to get information from the medical team there, and I saw that they were having problems. I wanted to find out what was going on and if it happened on -- I couldn't really see this side, but did it also happen on the right side.

And Team Member 21 acknowledged that it was happening, the same thing was happening on the right side as was the left. We talked about it and said, "Just take a break, everybody relax, we are not on the clock, this isn't a production where we have to get this done in X number of minutes. Take a break, everybody just relax, and then give the inmate a chance to relax, and we will see if we can make another attempt at it." Which after we had our conversation, five, 10 minutes, and then we went back to make another attempt.

At that point in time Broom started pointing out where the nurses made attempts to, like, draw blood or whatever. He was starting to show different ones that might be a better vein.

Q Okay. So your understanding of him pointing that out was that was where nurses in the past had had some level of success drawing blood from him?

A **He said that he --I can remember Broom's conversation because I was standing right there when they went back up, and he was saying that they had a hard time getting blood draws on**

him.

Q Okay.

A **And he said they have had success -- he pointed on this side here, I think, once. He said, "This here." (Indicating)**

Q For the record, "this here," you are talking about --

A **It would be on his left arm.**

Q Okay. On his left arm?

A **On the forearm side. It would be from the elbow edge to the wrist edge. (Indicating)**

Q On the wrist, on the back side of it?

A **On the back side of it. He said they had success there before about halfway down.**

Q Okay.

A **He pointed to that, he pointed to another spot on the back of his hand. (Indicating)**

Q Now you are pointing to your --

A **My right hand.**

Q So it was the right hand on him?

A **Yes.**

Q Okay.

A **And so he pointed out a couple of spots where he had success of doing a blood draw, and he said it was difficult for them, and obviously**

it probably was.

But at one point -- I don't know if it was shortly after that or whatever -- he said, "You are going to have to double that tourniquet up and give it a twist to make the vein pop up." He actually did that himself.

Q Okay.

A **And then they tried again for a little bit, and you could see that it just wasn't working.**

Q They being.

A **The medical team. I'm sorry. I should say the number. No. 17. Actually No. 9 tried again.**

Q Okay.

A **And No. 21.**

Q Okay.

A **And then I think at one point No. 17 then relieved one or the other. I am not sure which one. But then he made another attempt. And at that point we could see it wasn't working.**

Q Okay. Let's go back to the conversation during that first break.

A **Okay.**

Q There was discussion that here's what's happening. At that point did anybody suggest

this is simply not going to be feasible today?

A **Actually, the Director and I talked with those team members, and we decided if the inmate wants to go ahead, which he did, and wants to make future attempts or further attempts, then we will go ahead and try to establish an IV. There is going to come a point in the near future where we are going to say it is not going to work and we are going to say we are not going to go any farther, this can be done another day possibly.**

Q During that conversation did any of the Team Members, No. 17, 21 or 9, say point-blank, "This isn't going to work, this guy has got bad veins," or anything like that?

A **That came on the second meeting.**

Q I am talking on the first one. Nobody said anything like that?

A **They just indicated -- when I say "they," the team member, ones you just gave me the number, they indicated that they were having a lot of difficulty because the veins weren't holding.**

Q Okay.

A **And they were willing to make another attempt if the inmate was willing to make another**

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attempt, which he was. So that's when we went back and made the next attempts.
Q Okay.
A **And from that point we obviously realized this is not going to work, we are not going to get a viable vein, and we need two -- we need two viable veins. We couldn't even get one.**
Q I need to clarify something a little bit here for myself. You were in this conversation in J-1; right?
A **Yes.**
Q And it was Director Collins, Regional Director Voorhies, Warden Kerns, No. 9, No. 17 and No. 21; correct?
A **Yes.**
Q You didn't bring Mr. Broom out to participate in that conversation?
A **No.**
Q When you say that the inmates wanted to continue, that's not something that he chimed into that conversation about?
A **No. Right before we took our break, that we went and had our discussion, he wanted to continue on right then. And we said, "No, we are going to take a break, you need to take a**

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break, we need to take a break. Sit up, relax. We need to take a little break here, take five minutes or whatever."
He sat on the bed, the door was left open, I guess. The security staff was there and he was sitting up on the bed and he took his break and he went back and talked.
Q Okay. But would it -- I realize this might be speculation. In your opinion, had he been given the choice of keep making repeated attempts or stop, given those two options, what do you think he would have chosen?
A **I don't know how to answer that one, to be honest with you.**
Q Would it be reasonable to assume that he would say "stop"?
A **It would be reasonable to say, unless we knew for sure that we couldn't get a viable vein. We made some attempts, but I think that there is a point where we make a reasonable attempt to get veins and he is wanting to continue.**
Q Right. But I am saying -- it sounds to me like, hey, the inmate wants to continue so we will continue with a couple more attempts at this point. This is during the first break

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conversation, okay. So it sounds like to me -- and correct me if I'm wrong -- your testimony was the decision -- was it's tough but the inmate wants to continue, so we will keep giving it some more cracks; is that correct?
A **No, I am not exactly sure where you are going with this. But let me explain it again in a little different way --**
Q Okay.
A **-- that will help you out. We are not going to just -- an inmate says to stop, okay, we are not just going to stop. He needed a break at that point in time. We needed a break at that point in time. He wanted to continue. We said, "No, we are going to take a break and we want you to take a break." So we went and had our conversation.**
The conversation is we can make a few more attempts, we can try to get another location and see if we can get a viable vein. We went back after our discussion with the Director and South Regional Director and three team members, medical team members, and No. 10 -- we went back, started up again, and made an attempt. And at that point in time we

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realized that this isn't going to work.
Q Okay. I guess just for a real quick clarification then, when you say the inmate wanted to continue, that was when he was faced with the choice of continue right now or take a break; is that correct?
A **When we said we were going to take a break, he wanted to continue.**
Q Rather than take a break?
A **Right.**
Q What did he say, if you remember?
A **We told him that we were going to take a break and we wanted him to take a break, and he wanted to continue on.**
Q Right. But, I mean, what did he say, though?
A **He wanted to continue.**
Q He said "I want to continue" or --
A **Yes.**
Q Did he explain why?
A **He just wanted to get it over with. You know, that was his words. He said, "I want to continue on and get this over with."**
Q Why do you think he wanted to get it over with?
A **I don't know.**
Q Okay.

A I could speculate all day long on that, but that's all it would be.
Q So we have our conversation during break one, the team goes back, medical team goes back into the room. How long would you say that break was?
A I am going to say 10 or 15 minutes.
Q Okay. So they go back in the room. What did you do?
A The Director and I talked. We talked about it and I expressed one of my concerns to him, and my concern was if we can't -- if we can't get a viable vein and we have made a good faith attempt on this second try and so on, then we need to probably take a look at calling this off for the day.
Q Okay.
A My other concern is I don't want to get this inmate on the table and then we start Drug 1 and we blow a vein out, and then switch sides and we blow that out. We've got a guy started with Drug 1 with partial on this side blown out, and partial on this side blown out. I expressed that concern. And I think we were all in agreement on that after knowing how many

times we actually got a good vein but it just wouldn't hold.
Q Okay.
A And after they made a few more attempts in the room there, the medical team made a few more attempts in the room and said they were getting the same results. Shortly after that, we made the decision it was time to stop, brought the medical team back into J-1, talked about it.
Q This is after approximately how long then? You had your break, a 10 to 15-minute break, the medical team goes back in, and they work for approximately how long?
A You know, I was talking with the Director a couple of times during that, and I walked in there once or twice. I don't know, 35, 40 minutes maybe.
Q Okay.
A Just a guesstimate.
Q Okay.
A But when we realized it's not working --
Q When you say "we"?
A Medical team.
Q Okay.
A They said, "We can't get it to hold," so we

took another break. And we went back in J-1. Team Member 21,10, 17 and 9, I believe it is, we went back with the Director, South Regional Director -- went back and had conversation. I think there was a point when Rosie Clagg was there, also, and I think that might have been the point that she was in that meeting, also.
Q Conversation during the second break?
A Yes, I believe so. And I -- I believe at that point in time we felt that it probably wasn't going to work. And --
Q When you say "we," do you mean you?
A No. The medical team members, myself, the Director and so on. We thought that perhaps we weren't going to get a good viable vein.
We -- I asked Rosie if our doctor would come over and take a look and see if we are missing something or if there is a vein that, you know, she thought might work and so on and that we missed it. And so she did come over, brought her over to the Death House. I later learned that she made an attempt to do an IV. But she was supposed to come over and just take a look and let us know what she saw.
Q Okay. Was that a surprise to you, that the

doctor had made an IV attempt?
A Yes, it was. Because we told her, "Don't get involved, we just want to know if you see something we are not seeing."
Q Okay.
A I personally told her that and so did the Director. Basically the conversation is we are not asking you to get involved as far as doing that, just take a look at that and see if you see something that we are missing.
Q When did you have that -- not you and Director Collins -- when did you have that conversation with the doctor?
A When she arrived in J-1.
Q Okay. So that was while she was still in J-1?
A Yes.
Q What about when Director Collins talked to her?
A He was right beside me when we talked to her. He said, "We don't want you to do anything, just look."
Q Now, the idea was to have somebody other than 9, 17 and 21 take a look; right?
A Yes.
Q Somebody who was kind of like a higher qualified or a higher trained medical person;

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right?
A Yes.
Q Okay. And you asked Nurse Clagg to make that contact to the doctor?
A Yes.
Q Okay. Did you ever think about asking Nurse Clagg to do that task instead?
A Actually, I think Nurse Clagg was -- I don't know which one she was viewing from up near the holding cell. I think she was up there, but I don't know how long or which one she was, but I think she actually took a look.
Q So you saw Nurse Clagg up there taking a look before the doctor came in?
A I think she did. I think she went up there, but I didn't see her because I was still talking to the Director about the direction we might be going here in the real near future.
Q Okay. On what basis do you think she went up?
A I think she made comment that she would take a quick look before someone called the doctor.
Q You think that she made that comment or you remember her making that comment to you?
A As I recall it, I think she made that comment to me.

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Q You think she made that comment or that's your best recollection?
A Let me re-word it.
Q You understand I need to get specifics?
A Well, when I say "I think," I will just say that's my best recollection.
Q Okay.
A Because I had a hundred things going on that day, and then also this issue at the same time, okay.
Q Okay.
A So, as I recall.
Q Okay. And did you know or find out any results from any assessment that Nurse Clagg did?
A No. I just -- she came back in and went ahead and called the doctor over -- I think she was there for a short time. I don't know how long she was there.
Q When you say "she," you are talking about the doctor?
A Nurse Clagg. I don't know how long she was out there for sure, because I was out talking with the Director and Mr. Voorhies about possible options in the real near future, where we need to go with it.

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Q Tell me a little bit about those conversations. This is after the second break, right, and they are making further attempts; correct?
A Yes.
Q Tell me about those conversations that you just referred to?
A Pretty much I said it before. The conversation was if it looks as if we can't quickly establish a viable vein, then we are going to go ahead and contact the Governor and let him know that we are going to put it on hold for now. We are going to discuss one last discussion with the medical team, and then we will call him back.
Q Okay.
A And that's what we did. Our last discussion, we sat them down and said, "Is this going to work today?"
And the answer was "no" from all three of them.
Q Okay.
A And at that point in time we made our decision to call the Governor back and say, "This isn't going to work today."
Q Okay.

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A And I don't know what that conversation was between the Director and the Governor, but the Director went back and called him back, and then we got the seven-day reprieve?
Q Okay. And was that -- what was the origin of the seven-day part of all of that?
A I don't know. I don't know if that came from the Governor's attorney. I don't know exactly where that came from. I just know that was what I was verbally told, and then shortly after that we got it by fax that he got a seven-day reprieve.
Q Okay. So during the conversation, I guess, if I can classify them, we have got Conversation 1, or Team Conversation 1, which is at the first break. We will call it that, okay?
A (The witness nodded affirmatively.)
Q We have got -- and that's about 45 minutes into the process?
A Yes.
Q All right.
A Yes.
Q I just need to write this down so I don't -- team --
(A cell phone ringer sounded at this time.)

MR. BOHNERT: Go off the record for a second.

(A recess was had at this time.)

Q (By Mr. Bohnert) Okay. We are back. Before we took a break I was just trying to get an idea -- we started the process after about 45 minutes, you think; we had a break; we had the first team conversation with all of the members that we talked about there. Right?

A That's correct.

Q And then went back in, the medical team went back in, continued further attempts, and how long approximately are you saying that you think it was between -- I know you said you were busy during that point in time, but approximately how long were they working during the second time that they went back in?

A This is just a guesstimate, but I think somewhere between 20 and 30 minutes.

Q So 20, 30 more minutes, and then you said, "Take a break," or, I mean, who suggested taking the break at that point?

A At that point I think I suggested taking another break and come out then. That's when the doctor arrived over there at the J-1.

Q Before the break?

A I believe before the break, if I recall.

Q Okay.

A And then we had her go look.

Q Okay.

A And then they made -- I think the idea was to make one or two more attempts. If it didn't work, then we are stopping.

Q So you have the break after the doctor is there. There is another team conversation; right?

A Yes.

Q And that's you, Collins, Voorhies, No. 10, No. 9 and No. 17 and No. 21; right?

A Yes.

Q And then you said you made a couple more attempts after that second team conversation; right?

A Yes. Yes, sir.

Q And then was there a third team conversation that would be, again, that whole large group?

A Yes.

Q And you said at one of those Nurse Clagg was involved, as well?

A I don't think that was right after the first break. She took a look and then she went and called the doctor for us to come over.

Q So she may have participated in maybe the second team conversation?

A Yes.

Q Was she there also for the third team conversation?

A I don't recall her being there.

Q During the third team conversation, at that point it's my understanding -- if I am understanding you correctly, at that point is when you discussed the reprieve possibility; right?

A At that point, that's when we said we are not going any farther.

Q Okay. It was the second team conversation where the reprieve was first discussed with the whole team?

A No. I discussed that with the Director. It wasn't discussed with the whole time. After they went back in -- I mean after the break and they went back in -- the Director and I talked about it; if we can't get this we need to look at doing a reprieve, postponing this and doing it another day.

Q Okay.

A And when they came out on the -- actually it was the last break. We didn't go back in after that. It was a time to meet with the medical team that you had mentioned earlier, plus No. 10, and Mr. Voorhies, the Director and myself.

The conversation went like this, "Don't tell me what you think I want to hear. Tell me what I need to hear."

From all three team members, all three team members agreed, we can't get this today. At that point in time we said we are stopping.

Q I guess, my question is before the first discussions of a reprieve between you and Director Collins, had there been any solicitation of thoughts or feelings from the medical team as to the viability of -- or the feasibility of establishing IV access on Mr. Broom at any point, whether seven days from now, 14 days from now, anything at any point at that point? Had there been any kind of -- what is your thoughts on this? Do you understand my question?

A Yes, I do. I am sitting here recalling.

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Q Okay.
A **Sitting here recalling. And as I answer this one, I will be a little slow. I think it was on that final break, when we had our final break, and we were talking with the team about is this going to work today, tell us what we need to hear, not what we want to hear. You know, don't think that, just tell us like it is. And their comment was, "I don't think I can get it today and I have a question if I can get it seven days from now."**
Q So the seven days was not at the suggestion or -- the initial consideration of the seven days was not at the suggestion of the medical team members, was it?
A **No, it wasn't.**
Q That seven days arose during the conversation between you and Director Collins; is that right?
A **He had already talked with the Governor that this is a strong possibility that we are going to have to ask for a reprieve, and I guess the conversation must have been seven days because the Director mentioned seven days.**
Q Do you know if he suggested that?

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A **I don't know. I wasn't privy to the conversation.**
Q Okay.
A **So I have no idea. I just know that he told the team members, "Tell me what is going on and can we make this work today."**
And I said the same thing, "Don't hold back because we need to know."
Q Okay.
A **And that's when they told us, "It's not going to work today." And the question was -- the comment is we have a seven-day reprieve. And I think No. 17 and No. 21 mentioned, "I don't think it is going to work seven days from now, you know, if something doesn't change. If he doesn't become hydrated or whatever, I don't think it will work seven days from now."**
Q Okay.
A **That was the end of the conversation, basically. And the Director went back in and talked to the Governor, and shortly after that he told me he has got a seven-day reprieve and we will be getting that in writing here real shortly.**
Q Okay. Did you have an understanding, based on

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what the -- based on anything, but -- did you have an understanding of why the medical team was having difficulty establishing an IV site?
A **I think -- from what I understand from what they are telling me is that he wasn't drinking any liquids at all.**
Q When you say "we"?
A **Our medical team.**
Q Meaning?
A **17, 9 and 21.**
Q Okay.
A **He wasn't drinking liquids. He has dehydrated himself pretty much, as I understand it, and they weren't gaining access because the veins were smaller and collapsed and so on. Somebody mentioned being an IV drug user. I didn't hear that from him.**
Q From "him" being?
A **From the inmate, from Inmate Broom. I didn't hear that from him. That was like second, third-hand and a day later.**
Q Okay. So the information about the dehydration, that was also about him not drinking anything, that was also second-hand or third-hand information, or you knew that to be

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personally --
A **That was second-hand information. That was what I was told by the medical team.**
Q And that was during these breaks in the conversation -- during the breaks in the process?
A **Yes.**
Q That was not -- okay. So do you know what the basis for their understanding of this -- not drinking anything, do you know where they came by that information?
A **Actually, I think that they asked him, I believe, but I can't tell you for sure because I wasn't really right there if they did ask him. They asked him if he had been drinking and he said he hadn't been drinking fluids.**
Q So you don't know that, but that is your understanding of it?
A **I don't know that. I know the day after he wasn't drinking anything.**
Q Okay.
A **He just let it pile up, you know. I mean, there was fruit juices and so on, and think there was 21 of them in the cell.**
Q Okay. But that was the day after?

A **Day after.**
Q Okay.
A **So I can't give you a good for-sure accurate answer other than what they told me.**
Q Okay. So did any of them opine as to whether it would be possible 14 days from then or at any point beyond seven days?
A **The only conversation that I was involved in was the last conversation, when 21 and 17 said, "I don't know if this will work even a week from now if he doesn't get hydrated."**
Q Okay.
A **That's the only conversation that I had with them about that.**
Q And that's -- you are pretty sure that that's -- you are sure that that's pretty much an accurate statement of what they said?
A **It is not going to happen seven days from now unless he gets hydrated, yes.**
Q So was it your understanding that in seven days if Broom was hydrated, there would be no problems?
A **You don't know that until you start it and try it.**
Q Okay.

A **There is no way of knowing until you --**
Q It is your understanding that that was what they were thinking?
A **I am not sure. I can't tell you what they were thinking. All I can tell you is what they told me that day, and that's pretty much it.**
Q I guess I am -- that's not quite my question. My question was was it your understanding that their thinking was that this was okay so long as he was hydrated? Was that what you interpreted them to be saying?
A **That's what I interpreted the seven-day thing to mean, is if he got hydrated between now and seven days from now it might be successful, but who knows until you actually try.**
Q Okay. At any point during the conversation, the conversations, I guess, with you and Director Collins and/or regional Director Voorhies -- and was Andrew Stout there involved in any of these conversations?
A **Yes. Yes, he was.**
Q And in all of these that everyone else participated in?
A **I think he was there for the last one and maybe one other one.**

Q Okay. During any of those conversations you mentioned, you know, conversations were about what the options were, were there alternative access methods or techniques that were discussed or raised by anybody?
A **I think -- I think that somebody mentioned trying -- trying a jugular. We are not -- we don't have the equipment to do that.**
Q Okay.
A **And there was mention of the vein that goes across the chest. I don't know the name of it, but that --**
Q The one up here? (Indicating)
A **-- that goes across, yes.**
Q Subclavian?
A **Subclavian.**
Q Okay.
A **Yes. That was mentioned, but that one also is a little risky to do.**
Q Okay.
A **So we didn't make either attempt.**
Q Okay. Was that something that would have been feasibly considered?
A **It could have been considered.**
Q Okay. Why was a decision made to not go to

that? You said the jugular, you said you didn't have the equipment; is that right?
A **I don't think we had the equipment to handle that, the proper needles to handle that, and I don't know if any of our staff has done that. And if they haven't, we are not going to do it.**
Q If they haven't done it in what context? In execution context?
A **In the context of any medical context whatsoever. If they haven't done that and aren't proficient in that, that's not something I think we are going to try.**
Q Okay. So if, hypothetically, if No. 21 or 17 had done a jugular before or had done subclavian insertion or injection -- I am not sure of the terminology -- if they had done that procedure before in their capacity as EMTs outside the prison, would that have been okay, let's go ahead and try it here?
A **No. Because I think the subclavian -- I actually think that takes somebody that has medical skills to actually make a cut and then do an insert, and our staff obviously is not going to do that.**
Q Okay. So, I mean, I guess I am a little

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confused because you said that because they didn't have any experience doing it in any medical procedure you wouldn't do it. But I am saying if they did and it just wasn't in the rehearsals here, if it was something else, but if they had that experience but it wasn't in the execution context, would that have been sufficient in your view?

A **No. No. When you are talking about that, I think you are actually talking about making a cut on the chest area and then getting the vein. That's not something we are going to try here, no. And the idea of going into the jugular vein, I don't see us doing that.**

Q Okay. Do you know if it was a jugular that was eventually used for the Clark execution?

A **I wasn't here. I couldn't tell you what was used.**

Q So beyond -- in those conversations where those subclavian and jugular were raised, were those conversations that included the team members, the medical team members?

A **I think that 17 and 21 were there when we talked about that.**

Q Okay.

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A **And that was a short conversation because we realized that's not something we can do here. It was mentioned that that's been done before, not in this context and not what we do as far as the death penalty. It has been done in hospitals before. That's not something we can do here.**

Q Okay. So were there any other alternative procedures proposed or suggested, talked about, discussed, during those conversations that included 21 and 17?

A **No. We have our procedure and what we do. And outside of that, we're not going to go outside of that.**

Q By procedure, do you mean the written policy?

A **Affirm. Our policy, 01-CON-11, that's our guidelines, that's what we go by. And when we realized we can't get a viable vein today, we followed policy and we stopped.**

Q During the conversation that did not involving 21 and 17, the conversation with you, Director Collins, Regional Director Voorhies, you know,during those conversations were there any other additional, you know, alternatives suggested or considered or proposed, rejected,

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anything?

A **When I said that the doctor came over and said she would take a look, and she mentioned around the ankle area, that she could check that area there and see if that's a viable vein, and that was it.**

Q Okay. But anything other than peripheral IV access? Do you know what I mean by peripheral IV?

A **Yes.**

Q Anything beyond that?

A **No.**

Q That was ever raised or considered in that context with those discussions?

A **No.**

Q And you say it was just Director Collins who talked on the phone with the Governor; is that correct?

A **Yes.**

Q And you don't know if he actually talked with the Governor or if he was just talking with counsel from the Governor?

A **I can just tell you what he tells us. He was talking with the Governor.**

Q All right. At any point did you talk with

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anybody from the Governor's office?

A **Earlier that day I talked to Joe Torres.**

Q Jose Torres?

A **Yes. I talked with Jose earlier that day, and he said they would be faxing the results of if there was going to be a stay or not and that he would let us know as soon as he found out.**

Q That was before the execution process started?

A **That was before the process -- or the preparation process even started. That was two hours, three hours before that, probably 8, 8:30 in the morning.**

Q But from the time you read the death warrant on, you never talked to anybody from the Governor's office?

A **No.**

Q Did you have a chance to talk with anybody from the Attorney General's office other than Mr. Stout, who was there physically present?

A **No.**

Q Okay. Do you know if Director Collins talked with anybody from the Attorney General's office?

A **I don't know.**

Q You don't know that he did, but you don't know

that he didn't; right?
A **I don't know.**
Q Okay. Give me just one second. Do you remember who first raised the idea of asking Dr. Bautista to come and take a look and be over there?
A **Who came up with that idea?**
Q Who first raised that idea?
A **I did.**
Q You did?
A **Um-hum. (Affirmative)**
Q And who did you share that with initially? Do you remember?
A **Rosie Clagg. I asked her to call the doctor to come over and see if she can take a look.**
Q Was that decision ever something that was discussed with either Director Collins or regional Director Voorhies?
A **Director Collins and I discussed that, and I asked Rosie to call her and have her come over.**
Q You discussed with Director Collins -- I'm sorry, go ahead.
A **I discussed that with Rosie, and the Director was standing right there, and we just wanted her to take a look. And, again, we told Rosie,**

"I don't want her to get involved, just take a look."
And so Rosie invited her over and asked her to come over. She did. And then she went out and took a look and then did what she did.
Q Okay. But I guess my question is, is the first time that Director Collins or Regional Director Voorhies heard about this idea of having the doctor come over and help out, it was the first time that happened simultaneously with you asking Rosie Clagg to make the phone call?
A **Pretty much. I mean, we were talking, just talking about her -- Rosie having a doctor come over and take a look at it, and we agreed that let's have her look at it and see if there is anything else we missed or anything that she saw that we could do differently. And I asked Rosie to go ahead and call her, and that pretty much all happened at the same time.**
Q When you say "we decided," you are talking there was first a conversation with you and Director Collins where you raised the idea with Director Collins, let's have the doctor take a look?
A **Actually it was Rosie, Director Collins and**

myself, and we were -- I was talking with Rosie, Director Collins was talking with Rosie, and at that point the idea was brought up by me about having the doctor come over and take a look and give us a little assessment to see if we are missing something, see if there is something else we can do. That all happened in J-1 and the three of us were together when we were talking about that. I don't recall anyone else being there other than the three of us.
Q Okay. What was Director Collins' reaction to your suggestion?
A **His reaction was affirmation, yes, let's have her come and take a look. Shortly after that she did arrive. Before we let her go in and take a look, we told her -- Director Collins told her, I told her, "Don't get involved, all you have to do is take a look." And Rosie was there when she was told that.**
Q Okay. What was Regional Director Voorhies' reaction when you raised the suggestion for the first time?
A **I don't think he was there in that conversation that the Director and I was having with Rosie.**
Q I am confused. Now, your recollection is that

it was you and Director Collins and Rosie Clagg?
A **Yes.**
Q Okay. So there wasn't anybody else there?
A **Not that I recall.**
Q Okay. What was Rosie's reaction when you raised that idea for the first time?
A **She was okay with asking the doctor if she could come over and take a look.**
Q Okay.
A **And then she went ahead and made the call, and subsequent to that the doctor showed up.**
Q Okay. And neither of them thought that, you know -- or had any kind of second thoughts or second guesses on that?
A **They weren't going to get involved in it because of the medical issue with licenses and so on, Hippocratical Oath, of getting involved. They were both told, "Don't get involved, other than just take a look."**
Q But I'm saying neither one of them, Rosie Clagg or Director Collins, neither one of them voiced any concerns or questions about involving the doctor; is that correct?
A **As far as concerns, I am guessing --**

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Q Well, just, saying, hey, hold on, let's think about this for a second, or anything like that. I mean, it is you raised the idea, they agreed, boom, we make the phone call?
A **Um-hum. (Affirmative)**
Q Okay.
A **And then, as I said, after the doctor got there we told her, "Don't get involved, take a look and let us know if there is anything we can do."**
Q Okay. Are you typically the person who orders incident reports to be filled out?
A **As far as -- I guess I am not following your question.**
Q Well, if you think back with me for a moment -- I guess you wouldn't have known because you weren't here. Following the Clark execution a while back, there was a thick stack of incident reports that were filled out by every member of the team who was there, by everybody who was there, okay, their observations, their recollections of what happened; right? Do you follow?
A **Um-hum. (Affirmative)**
Q Yes?

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A **Yes.**
Q Okay. It's my understanding that somebody orders somebody else to do those incident reports; is that accurate?
A **That's accurate.**
Q Okay. Would you be the person to issue that order for everybody who was present to fill out an incident report?
A **That could have been Team Member 10. Team Member No. 10 could have ordered -- like I said, I wasn't here for Clark, I don't know who ordered it. Major, myself, could order folks to write incident reports.**
Q Okay. So following the Broom incident on the 15th of September, you didn't order anybody to fill out an incident report, did you?
A **No.**
Q Why not?
A **We never got started into the execution process. We were in the preparation stage and never went beyond it. And my medical staff made their good faith attempts and wasn't successful, and we met three times and we all agreed that we can't make this work today. And there was actually no reason to write incident**

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reports. We never got to the point where we had a problem, had a blowout or something like that. We never got to that point. We never got to the point of even getting an IV started, so it is what it is. So we never got IV access started, so we never got off ground zero.
Q So the thought never crossed your mind that there might be some people who are going to be interested in what happened here?
A **There always is people interested in what happens here, obviously.**
Q Right. Right. So I guess my question is, you know, I mean, my understanding here is you are saying that there was no reason -- you didn't think there was any reason to fill out an incident report; correct?
A **Really there is not because we had a timeline, we had a conversation. Now here we are the day of the deposition, I don't know what the rest of them said but I am telling you how it went, and there really wasn't any need to write an incident report.**
We just couldn't get the IV access even started, so we never got past step one or really into the preparation stage, where we are

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ready to go in and walk into the chamber. We never got to the point to where we could even start that.
Q Okay.
A **So we didn't have what you would call a big incident. We just had -- we couldn't get IV access started. Clark, I don't know what happened with Clark. I wasn't here. I understand that he was actually on the table --**
Q Okay.
A **-- as I understand it, and then things happened. I don't know what all happened, but then they had to do some adjustments and start another IV. That's a different situation.**
Q Okay. Well, whether it's a different situation or not, would you agree with me that what happened with Mr. Broom, to the best of our knowledge, is pretty unique and pretty rare in the execution/death penalty context? Would you agree with me that that was a pretty rare occurrence?
A **For my experience, this would have been the seventh one I was involved in. All previous six went well and it was all accomplished correctly. This one here we couldn't get the**

IV started, and it was what it was. We just couldn't get it started.

Q Okay. So I guess when I am saying rare, I am talking about somebody actually walking out of the holding cell at the end of the day on which they were scheduled to be executed rather than being taken out? You know, not living, I guess. Would you agree that that's a pretty rare occurrence?

A Yes.

Q I guess just on a larger, kind of bigger scale, in the two weeks or I guess -- or two-and-a-half weeks, whatever we are past September 15th now, have you had an opportunity to kind of reflect on what happened on the 15th? Have you thought about it at all?

A Yes.

Q And have you thought about what might have happened on September 22nd if the reprieve had expired and you would have been right back in the situation of attempting to execute Mr. Broom again?

A I thought about it, but I -- again, until you actually make that attempt you don't know what's going to happen.

Q I mean, I realize you can't -- enlighten me. What did you think? What have you thought? What are you thinking?

A From the 15th to the 22nd, I thought about it several times and reflected on what the team was saying, that this probably won't work seven days from now if he doesn't hydrate himself. My concern is in seven days from now he doesn't hydrate himself.

Q Okay. Were those concerns ever relayed to anybody else by you?

A No, just my thoughts.

Q Did you ever have any concerns or questions about what happens if we aren't able to establish IV access again on the 22nd?

A I think we just follow policy again. If we couldn't establish it, we are going to have to call it off again.

Q And would you consider -- I guess we talked about this earlier, but maybe now it is a different context. At what point on the 22nd, a hypothetical thing -- going forward on the 22nd, at what point would you have said, all right, we are going to stop this again?

A I am just saying it this way. This is my own

personal view on it as far as what I saw and what they told me. If we would have tried that on the 22nd and we tried four or five needle sticks and we kept having veins blow up, I think right then would have been the time to call it off on the 22nd because nothing changed from the 15th, so why go on.

Q So you are saying four or five on the 22nd. Why would that have been any different, as far as enough-is-enough point of four or five, than on the 15th when 18 or 19 sticks were made?

A Well, that question just answers -- from my point of view, you just answered my question for me. Because we tried 18 or 19 attempts on the 15th and we didn't get it. The veins -- the medical team didn't make it work. The veins continued to bulge, and my medical team says seven days from now it is probably going be to the same thing.

Why would you want to go 18 times at that point? I think at that point we would have to say, look, five or six tries and it doesn't work, getting the same results as we did on the 15th, it is time to stop, this isn't going to work.

Q But five or six the first time around would have not been enough to raise those same questions?

A I think I said it earlier, Broom wanted to continue on just like we did, and was pointing out, try this, try this, and this one here might work better, and so on, on the left arm.

You know, we tried to do it the best we could do it on that day, and he was wanting to continue on just as we were. The only time that I realized that he was becoming frustrated was towards the end.

Q What do you mean?

A He was becoming frustrated towards the end. I wasn't there. As I understand it, the doctor attempted to make a needle stick in the ankle.

Q Okay.

A And he became frustrated after that and had a few tears from it.

Q What do you mean he became frustrated? I'm trying to understand.

A He actually started crying, and he was obviously worn out, our team was worn out. And, you know, there is no need to go beyond that.

Q Okay. So after 18 or 19 needle sticks would it be reasonable to think that he was probably in pain at that point?
A **You know, I wasn't there for all of the needle sticks. The ones that I was there for he had no reaction to them. As I understand it, when the attempt was made in the ankle, that he did feel that and did react to that, you know, saying that it hurt a little bit. And -- but I wasn't right there when they did that. That is just second-handed information.**
But for the ones that I was there on, he was laying there, didn't flinch and, you know, he would ask them if it was good and they would respond no. The medical team would respond back, no, it wasn't, we have got to try again someplace else. But he didn't show any pain, didn't reflect any pain, didn't complain of any pain on the ones I saw.
Q Now, you testified just a minute ago that Mr. Broom just wanted it to be over; is that right?
A **Yes.**
Q I don't want to put words in your mouth.
A **Yes.**

Q Is that right?
A **That's right.**
Q Why -- I mean, I know you have testified that you think that based on what he said. I am asking you why do you think he wanted it to be over?
A **Why do I think?**
Q Yes.
A **I think he has been on death row for, what, 25 years?**
Q As far as I know.
A **And then he thinks he has a possibility of a stay of execution, and that goes flat and he doesn't get it, he is denied, and now we are into the point where we're inserting needles in preparation to do the execution process. And I think probably he was at the point -- at that point he is -- I think there is a mindset folks get. There is a point where you know you are going to go beyond this and the execution is going to get carried out, and I just think that that's where the inmates get. I have actually seen -- Getsy -- I will use that for a example.**
He was totally prepared, mentally spiritually. I think he was totally prepared.

And his last statement kind of reflected that, apologies and so on. He wanted to move forward with it. I actually think Broom in his mind, a different way, but in his mind he was probably ready to move forward, just from his verbalizations. He was ready to get this over with.
Q Okay. But when you said he wanted to continue, I guess I'm -- so you thought about kind of, you know, the issue of dehydration and doing it on the 22nd in the days following the 15th; right?
A **Um-hum. (Affirmative)**
Q The TRO gets entered that says we are not going to do it on the 22nd?
A **Right.**
Q At that point then, from then until you sit here today now, have you had any other thoughts about what might happen or what can happen, what else would we do with Mr. Broom?
A **No. Because this has been put on hold, and I think November 30th -- we have until November 30 to make a decision or this will end up in court. And I haven't given it much thought, about what we are going to do, until I**

know what date we are going to have if we have a date.
Q Okay. Well, at this point you have an execution scheduled that's at this point scheduled to go forward next Thursday; is that correct?
A **That's correct.**
Q And have you given any thought to what if Mr. Reynolds presents the same problem?
A **Well, we are going to follow policy, just like we did this last time. And if we can't get an IV started and we can't go forward, that is just the short and simple of it, we can't go forward.**
Q Would you go two hours and 18 or 19 needle punctures with Mr. Reynolds?
A **Who would know until we actually make that attempt?**
Q I am asking you. Hypothetically, if you are having problems establishing IV access for Mr. Reynolds next Thursday, is it going to be the same thing, that it will be two hours or four hours? You know, at what point in that situation -- have you thought about what the procedures might be?

A No. That's something that I would rely on our medical team, if they encountered exactly the same thing, but everybody is different.
But if they encountered this exact same thing -- we have had, what, 33 executions, and this is the first one where you have veins blow up and you couldn't get an IV started, couldn't even get him out of the holding cell.
So that's one person out of the 33 that we have had. We just have to make the attempt next week. If we couldn't get the IV started, I don't know if that would be in that case six sticks or if it would be 12 sticks, I don't know. We would just have to play it out as we go, and I don't know how that would be. That would be based on what the medical team told us.
Q Okay. And is it still your position that you have from the time the execution starts when you read the death warrant until midnight to be able to accomplish that end result?
A We have that time frame to do that. But I think I have said it before. There is a point where a prudent person or a person that would say that this is reasonable to stop at this

point or not go beyond this point, and that's where we got with Broom. We got to the point where we said, look, this is not going to work, let's stop it, why go farther.
Q Okay. Have there been any discussions that you have any knowledge of or any participation of in creating or adding some kind of backup plan in case this happens again in the future?
A We have talked about it.
Q When you say, "We have talked about it" --
A When I say, "We have talked about it," Legal Counsel and the Director, just that we probably need to take a look at having a backup system.
Q Okay. And so it -- and, I guess, flesh that out for me a little bit more.
A Well, I guess there is a few options that you can do. IO was mentioned, an interosseous device was mentioned. I have those on site.
Q When you say "on site," what do you mean?
A I have a few in my safe that we ordered in case we do go in that direction, and medical can use them if we don't. So I have a few of those. Our EMTs are trained, both of them have used it before. Still we would have to go through training for it again. We would have to go

through that whole process. It would have to be documented, added to the policy. We are not there yet. So, yes, it has been discussed, but there has been no word yet on which direction we are going to go as a backup plan.
Q Okay. You mentioned there were a couple alternatives and IO was one of them. Anything else?
A I think that there is just research on what else -- what else we do or -- there is a medical restriction right now as far as a doctor being involved, you know, the Hippocratical Oath, or a nurse being involved. So short of that, IO has been mentioned and talked about. And other than that, they are just researching right now. When I say "they," our legal counsel in central office.
Q Okay. Do you have any idea what else beyond IO they are looking at?
A No, not at this point.
Q You have not had any suggestions from anybody?
A No.
Q Has anybody, any team members offered up any suggestions to you?
A No.

Q Okay. Have you heard of any other options that legal -- you said there is research -- I mean, what kind of stuff are they researching?
A I am sure they are having conversations with our medical professionals and so on, doctor-level, on what can be done.
Q Dr. Lovell, (*phonetic spelling) is that a name?
A No. When I say doctor level, not EMT level. But at a doctor's level or above.
Q Gotcha.
A Or a surgeon or whatever. I am sure there is conversations on what will actually work as an option, and what won't work, what we can feasibly do in our setting, and so on. I am sure that conversation has been had.
Q So, to your knowledge, has there been any considerations or contemplations, anything, conversations, about using a cutdown procedure as a backup?
A No.
Q Same thing for a central line?
A The IO would be the only thing that I have heard talked about.
Q Okay. So nothing for like femoral access?

A **No.**
Q Nothing like subclavian, nothing -- or subclavian or jugular?
A **No.**
Q I was reading last night on-line some stuff, and I saw one guy who is kind of an outspoken attorney who is advocating a return to gas chambers or some intra-muscular injection technique to -- have you heard any kind of consideration or contemplation of using either of those?
A **No.**
Q Okay. So to the best of your knowledge there is no backup plan in place at this point?
A **No, there is not.**
MR. BOHNERT: Okay. I think at this point I am good.

EXAMINATION

BY MR. SWEENEY:
Q I just have a few, Warden. Bear with me. As you know, I'm Tim Sweeney and I appreciate your patience with us today. Just so I understand the sequence, it sounds like the process began when you read the warrant; correct?
A **Yes.**

Q Mr. Broom at that point in time -- at that point in time you started the clock, which ran until midnight; is that right?
A **Yes. That's correct.**
Q In other words, "Mr. Broom, we are here today to execute you," right? That's what you are telling him, correct?
A **Yes.**
Q You are reading the Order of the Court to him, correct?
A **Yes.**
Q In his presence, right?
A **Yes.**
Q A very solemn thing, I imagine?
A **Yes.**
Q And at that time the execution process begins, correct?
A **No. At that time the preparation process starts.**
Q Okay. You read the warrant to begin that preparation process, as you call it?
A **Yes.**
Q You can call it preparation. You can call it whatever you want. But the execution has now commenced with the reading of the warrant?

A **We disagree on the word execution and process, obviously. Preparation is getting them ready to actually go into the execution process. And the process to me, for lethal injection, is when the lines are hooked up and the drugs start. That's actually the process. This is all preparatory before that.**
Q I suppose we can sit here all day and argue about whose interpretation is right. But you will agree with me that the warrant is not read when you go into the death chamber; correct?
A **That's correct.**
Q The warrant is read right outside the door before the medical members go in to begin sticking needles into the man's arm?
A **That is correct.**
Q You are the one that read the warrant that day, correct?
A **Yes**
Q And at that point in time the process began, correct?
A **Yes.**
Q The medical team entered the chamber, correct?
A **Yes.**
Q Lawyers weren't allowed back there with the

inmate anymore; is that correct?
A **That is correct.**
Q Because the process had now started, correct?
A **Yes.**
Q And when Mr. Broom asked for his lawyer sometime during that process, he was told, no, you can't have your lawyer because the process has started; is that correct?
A **Yes.**
Q And that's the rule, right?
A **Yes.**
Q Once the execution starts, no lawyers; right?
A **Right.**
Q Now, you were there, I guess, and it is unclear but it sounds like you were there for some part of the time after they went in and began the process; correct?
A **Yes.**
Q How many minutes do you think you were standing outside the cell?
A **The first time I think probably 20 minutes or so.**
Q And at some point was a break taken?
A **Yes.**
Q And how long into it was that first break?

A **I think I said earlier -- I think it was near the 30-minute mark or so.**
Q 30 minutes or no?
A **Yes.**
Q Would the timeline show the first break?
A **I don't know.**
Q Would you expect it to show the first break if it was taken? Would you expect that kind of information?
A **I think it would.**
Q Yes.
A **I think it would.**
Q Okay. At the time of the first break, were you still standing outside the cell?
A **No. I was talking with the Director.**
Q So you had already moved into another area; is that correct?
A **Yes, back in J-1.**
Q Now, during the first period, then, before that first break, 30 minutes or whatever it was, did any of the medical members take breaks? In other words, before that break?
A **Yes.**
Q And that would have been the one where Team Member 9 was given the break because she was

hot; is that correct?
A **Yes.**
Q So that would be sort of a break before the main break for everybody; is that correct?
A **Yes.**
Q And you were there when Team Member 9 took her break; is that correct?
A **That's correct.**
Q So that would have been sometime in that first 15, 20 minutes; right?
A **Probably 20 minutes or so into it.**
Q So your recollection was that she was given a break because she was very hot and appeared to be uncomfortable; is that correct?
A **Yes.**
Q You explained about that, I think. And at that point is that when 17 went in?
A **Yes.**
Q So is it your testimony that 17 went into the room to make some efforts before the first break that we are talking about here?
A **Yes. That was probably -- he made the attempts on the left arm, and that would have been anywhere between seven and ten minutes, probably, where he was looking and made a**

couple of attempts to start an IV access.
Q But this was, again, before you had the first break?
A **Yes.**
Q Did you observe 17's efforts on the left arm?
A **Yes.**
Q Do you remember which part of the arm he was working on?
A **It was on the forearm area, on the inside of the forearm.**
Q Inside forearm of the left arm?
A **Yes.**
Q Did you observe him doing anything up at the biceps area of the left arm?
A **Looking.**
Q Did he make any sticks up at the biceps area that you can recall?
A **I was thinking that he did up -- up in the mid-biceps area.**
Q Okay.
A **On the left arm.**
Q So that would have been in that seven to 10-minute time frame that he was working on the left arm?
A **I believe it was.**

Q At this time, again, before the first main break where everybody took a break, was Team Member 21 still working on the right arm?
A **Yes.**
Q Did he take a break? In other words, leave the room or take a break at any time before that first big break was taken?
A **No. I don't believe he did.**
Q So your recollection is it was only Team Member 9 that had a break before the first big break; is that correct?
A **That's correct.**
Q All right. So the process happened for that 20 minutes, whatever it was, 30 minutes, that first period of time; correct?
A **Yes.**
Q And then there was the break, the big break we are talking about; is that right?
A **Yes.**
Q And that lasted about how long?
A **Ten, maybe 12, 14 minutes.**
Q And then during that 12 to 14 minutes, is that when you folks had one of the meetings with the team members?
A **Yes.**

Q Back in J-1?
A **Yes.**
Q Okay. Now this -- I think you testified about all of this already, and I don't want to go over it again. This would have been a meeting among the medical members, the Warden, the Director, Team Member 10 and Mr. Voorhies; is that correct?
A **Yes, that's correct.**
Q And during that meeting back in J-1 the decision was essentially made we will just keep trying today, at least at this point?
A **Actually, no. At that time, I think I testified earlier, the decision, based on what the medical team was saying, we can give it a few more tries to see if we can gain access. So after the break, they went back and gave it a few more tries to gain access.**
Q This was before the doctor was called and before that issue was even raised; is that right?
A **Actually, that all -- when the break happened, that's about the same time we called the doctor, in that time frame.**
Q During that first break?

A **Yes.**
Q I guess I didn't catch that.
A **I don't know if I said that clearly or not, but I think that's the time frame that the doctor was called over, during that first break.**
Q Okay. And then did the doctor arrive before the process resumed? Or did the process resume and then she arrived later?
A **As I recall, the process resumed and then she arrived.**
Q Sometime later?
A **Within a few minutes.**
Q A few minutes. Okay. So in any event your recollection is you had the meeting and then the process was resumed; is that correct?
A **Yes.**
Q Did you -- and by that, I guess "we" meaning the team members, the medical members went back into the room; is that correct?
A **Yes.**
Q Which medical members went back into the room?
A **I couldn't tell you because I was still talking with the Director.**
Q Did you remain in J-1?
A **We were back there another three or four, five**

minutes, maybe, talking about what we plan to do in the real near future if this next attempt doesn't work.
Q Okay.
A **And we were also waiting for the doctor to get there because we wanted to talk to the doctor.**
Q Okay. So as to what was going on then in the holding cell with Mr. Broom at that point in time, I guess you were not able to tell us; is that right?
A **I couldn't tell you because I wasn't out there.**
Q As to who was doing what and how many attempts were being made and as to what was happening with those attempts, you have no knowledge?
A **I have no knowledge of it.**
Q Okay. How long in total would you say did the process last during that second stint? You know, after the first break, process resumed, team members went back in. How long until it was called and there was a halt again?
A **I am going to say, including the doctor going in there to do the assessment and take a look, I am going to say probably 20 minutes.**
Q Twenty minutes?

A **I think so.**
Q That's your best recollection?
A **Twenty to -- 20 to 30, on the outside, I would think.**
Q Okay. And in terms of how many attempts were made during that process, you were not aware; correct.
A **I wasn't aware until afterwards.**
Q All right. Were you ever made aware as to how many sticks were made on Mr. Broom that day?
A **Right before I called the team members back on the last call-out, I asked for an approximate, and they thought they were upwards of 15.**
And I told the Director we need to meet again, and so we pulled the team out and brought them back, we met. And I mentioned the conversation earlier, that we asked each team member, is this going to work today or not. And they said, "It is not going to work today," and that's when we called it off.
Q Who told you they were upwards of 15?
A **I am not sure who I asked, which one that I asked, but one of the medical team members. And they thought it was approximately 15.**
Q Was this before or after the doctor arrived?

A **After.**
Q Okay. So the doctor had already come, to your knowledge?
A **Yes.**
Q Let's talk about the doctor for a minute. And I heard your testimony about that. She came over at your direction; is that correct?
A **Yes.**
Q And you had actually discussed that with the Director and he approved that, thought that was a good idea; correct?
A **Yes.**
Q Now, did you yourself speak to the doctor that day?
A **Yes.**
Q Are you sure about that?
A **I'm positive.**
Q Because she didn't remember talking to you.
A **I don't think she remembered talking to anybody that day. She was all upset and frustrated, you know. She was upset. She said she didn't want to get involved. We just asked her to take a look. And she agreed she would take a look but she didn't want to get involved. And we're fine with that, we don't want you to get**

involved, and that was pretty much how the conversation went.
You would have to know our doctor. Little things upset her. Anything upsets her sometimes, and she tends to get a little frustrated.
Q What is her name?
A **Dr. Bautista.**
Q How long has she been here?
A **She has only been here on contract part-time four or five months.**
Q Why did you put her in the situation where she had to go in this room with this inmate who was about to be executed?
A **The reason we asked her over to take a look at that, to see if there was -- like I said earlier, anything we were missing that she thought might be a viable option that was within the scope of what we were going to do, a peripheral vein. And we didn't want her to get involved. We didn't ask her to get involved. And she was told, "Don't get involved."**
Q She was told by who?
A **Myself and the Director.**

Q And you are testifying here today under oath that you are quite sure you told her that?
A **Positive.**
Q Positive. And were there any people there that witnessed this?
A **The Director was there and myself and Rosie Clagg.**
Q Rosie Clagg was there, too?
A **Yes.**
Q And this all happened in J-1; is that your testimony?
A **That's correct.**
Q And so what happened? Did you then tell the doctor, okay, now, go in there and tell us what we are missing? Is that how it happened?
A **I asked her to take a look at it and see if there is something that we are missing. And the Director and I continued to talk. She went in with Rosie. And after that I couldn't tell you what happened. I have learned later on that she actually made an attempt.**
Q Okay. Who told you that?
A **I am not sure which team member. I heard it and I thought, no, this can't be right. And so I took a walk down to the infirmary, and I**

asked Rosie and she goes -- and she said absolutely, she did.
Because I wasn't there. I was hearing this little thing going on that she made an attempt and -- second-handed, so I went right to the source and asked Rosie did she actually make the attempt, and she told me she did.
Q Okay. Did you ever talk to the doctor about this?
A **I haven't talked to her about it since.**
Q Why not?
A **I think right away we knew we were going to have depositions. Whatever she says, she says.**
Q Okay.
A **I wasn't there. I am not going to lead her in any direction or another. But as soon as I learned about it I notified the AG's office, I notified our Director and notified everybody that she actually made an attempt. I am not going to hide that from anybody.**
Q All right.
A **She made the attempt and we told her not to.**
Q And you are testifying here that you told her not to take make an attempt?
A **No. We told her to take a look, we don't want**

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you getting involved other than taking a look.
Q Did you tell her not to make an attempt?
A **We told her not to do anything but take a look.**
Q What words did you use is what I want to know?
A **"We want you to only take a look and see if there is a viable vein that we can use, nothing else."**
Q All right. So you did not tell her, "Do not make an attempt," correct?
A **I can't sit here and tell you exactly. I just know I told her, "Don't get involved, just take a look."**
I didn't tell her, "Don't make an attempt."
I guess you are leading me into a question that I really can't answer because I didn't tell her, "Don't make an attempt."
Q Fair enough. That was my question.
A **Okay.**
Q Exactly.
A **Okay. I told her, "Don't get involved other than looking," and that was it.**
Q Isn't looking -- telling her to go in there and look, isn't that being involved?
A **No. She is not physically being involved in**

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it. She is taking a look at it. That's how I see it.
Q Okay. But you are telling a doctor, you know -- and she works for you, right, essentially?
A **Yes.**
Q And you are telling her to go in there, take a look, come back and report to us, people in charge of this institution, on what you see the situation to be. Is that essentially what you charged her to do?
A **That's correct.**
Q All right. But you told her -- I guess you also said, "Don't get involved"; is that correct?
A **That's correct. And she actually said, "I don't want to get involved."**
And we said, "That's fine, we don't want you to get involved. Just take a look for us."
Q Okay. And then she went in there evidently; is that correct?
A **That's correct.**
Q And then I imagine you were waiting for her to come and tell you what she had found; is that correct?

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A **That's correct.**
Q You were interested in her input, I imagine?
A **Yes.**
Q Because that's why you called her over, correct?
A **Yes.**
Q So what did she tell you she found?
A **Actually when -- when I was talking to the Director and then shortly after that, I went back in there and I didn't realize she made an attempt.**
Q You didn't answer my question. My question was, okay, you called this woman over, this Asian doctor; correct?
A **Yes.**
Q Who works for this prison, correct?
A **Correct.**
Q She has been here how long, did you say?
A **Four, maybe five months part-time.**
Q Okay. She goes in there at your direction to tell you, you know, let us know if there is anything we can do, let us know if we are missing anything; correct ?
A **Correct.**
Q And you are on this death warrant, the process

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has started, Mr. Broom has been there for an hour-and-a-half or more waiting to die; correct?
A **Yes.**
Q You send in a doctor, correct?
A **Yes.**
Q Because you want her input, correct?
A **Yes.**
Q She goes in at your direction, correct?
A **Yes.**
Q I imagine you are curious as to what she is going to say, correct?
A **Yes.**
Q What did she say?
A **After she came back out -- I was back there with the Director. She came back into J-1 and she said just, "The veins aren't holding."**
Q So she actually came back and had a discussion with you and the Director; is that your testimony?
A **Yes. She and Rosie came back and said, "The veins aren't holding."**
Q Okay. So they came back from the cell front; is that your testimony?
A **Yes.**

Q They came back to you and the Director; is that correct?
A Yes.
Q And she said to you, "The veins aren't holding"?
A Yes.
Q And that's your testimony here today under oath?
A Yes.
Q That this is what Dr. Bautista said?
A Yes.
Q Okay. So your testimony is she confirmed what you already knew?
A Yes.
Q Okay. Did you ask her how she knew that?
A No.
Q Did you ask her, "Did you look here?" Did you ask her any questions to probe because you were interested in what she had to say, I imagine?
A Well, after the number of attempts we made on him on the first session and then the second session, and she came back and said, "The veins won't hold, the veins aren't holding," she pretty much confirmed what we already knew. And, no, I didn't ask her a lot of questions.

She is a doctor. The medical team has already said that the veins aren't holding. She confirmed what they were saying. And at that point in time we pulled the team out, and that's when we had our last meeting.
She left J-1, went on back to what she was doing, and then we had our meeting.
Q Okay. Your testimony is that you had this doctor come over to make this attempt, or to provide this assistance. She came back and actually gave you her feedback, her opinion; is that right?
A Yes, right before she left.
Q And you didn't ask her any questions?
A No.
Q You didn't ask her why she thought that?
A No.
Q You didn't ask her, "Did you look here, did you look there, did you do this, did you do that?" You didn't ask her any questions at all?
A That's correct.
Q You didn't bring your medical team over to ask her any questions; is that correct?
A That's correct.
Q Because you were -- I guess she had told you

that the veins weren't working or weren't holding; is that your testimony?
A Yes.
Q Was that her exact words?
A Yes.
Q And you believe the Director was there, too; is that correct?
A I believe he was.
Q And you believe Ms. Clagg was there, too; is that correct?
A Yes.
Q All right. Did she tell you that she had made an attempt?
A No.
Q So you didn't find that out until later?
A That's right.
Q Now, this is one of those things that I am confused about. Now, this Mr. Broom guy, okay, he is an inmate here; correct?
A No.
Q Inmate here of the State of Ohio?
A Yes.
Q He has been in the custody of the State of Ohio for at quarter of century or so, correct?
A Yes.

Q And you have known for how many months that he was going to be -- supposed to be executed on September 15, 2009?
A Probably four.
Q Four months?
A Probably four months.
Q And that's -- by that, we mean that you have known for four months that that was going to be the date; correct?
A Yes. You understand the process, I'm sure.
Q Yes. Okay.
A We get the order from the Supreme Court. It was maybe set on April 10th that he would be executed on September 15th, we will say.
Q And the prison here, the people here in Lucasville, including you as the Warden, you have known for decades that some day he is going to be brought down here to be executed; correct?
A Yes.
Q So he shows up ready to be executed on the 14th of September; correct?
A Yes.
Q You guys have a procedure in place that is supposed to be applied to cause him to be put

to death on the 15th of September; correct?
A **That's correct.**
Q And you've had 10 years, 15 years, 25 years, to figure out what kind of veins this man has; correct?
A **Yes.**
Q And he wasn't some guy just off the street, right?
A **That's correct.**
Q He was a guy that has been in your custody for a very, very long time; is that correct?
A **Yes.**
Q And I guess what I am hearing you say is that on the day of his execution after the process has started, you here at the prison are learning for the first time that, hey, we may have some problem with this man's veins; is that correct?
A **Yes.**
Q Now, as the Warden here, aren't you angry that you -- your team didn't figure that out before you brought Mr. Broom over here and read that warrant to him?
A **You know, when you are asking me that question if I am angry, no, because I will tell you why**

I am not. If I intentionally dehydrate myself, if that's what he did -- I don't know if that's what he did. But if he intentionally dehydrated himself a week or two weeks before, then that could have affected the veins, as I understand it from what the medical team is telling me.
Q Okay.
A **I don't know. I mean, anybody can dehydrate themselves and it starts causing the veins to constrict a little bit. And if that's what he did, that's what he did.**
He made the comment that I heard in the process when we were trying to start the IV that the nurses have had problems getting blood draws before. So that may indicate to me that maybe this just isn't dehydration, maybe he has always had a problem of accessing veins.
Q Bingo.
A **But we weren't told.**
Q Why not?
A **That's a good question. I don't know.**
Q Don't you think you should have been told?
A **I couldn't tell you.**
Q I mean, isn't that something you think you

ought to know?
A **You would think that that was something that would be charted, that we knew ahead of time and so on, but we didn't.**
Q Okay. And I guess my question to you, as the Warden, the person in charge of making this process happen for Mr. Broom, who showed up here ready to be executed -- like you said, he had given up, he knew it was time to go, he was there, he was going to let you do it to him because he had no choice. It started and you can't finish it because of no fault of his own; is that correct?
A **Yes.**
Q And his vein issue that you are talking about is an issue that was within the power of the medical expertise that you can bring to bear at this prison to identify and notice before September 15th; correct?
A **I don't think I can answer that, actually, as correct, because I don't know if this man has ever had an IV started on him since he has been locked up. I don't know.**
Q But you have had 25 years to test him; right?
A **The difference between an IV start-up and a**

saline drip and just drawing blood, there is a difference. One is taking fluid out on a gravity flow, and one is putting fluid in. When you put fluid in, obviously there is a little pressure and so I don't know if he has ever had a IV drip before or if he has had an IV before. It is a little different when you have an IV versus when you are having just a blood draw.
Q Fair enough. But whatever the excuses might be, he has been here. If there is a vein issue that needs to be identified and addressed, that's something that could have been done before September 15th; correct?
A **Yes.**
Q But it evidently was not; is that correct?
A **That's correct.**
Q Now, this hydration issue, I know I have heard you say that that potentially was an issue on the 15th of September. Has that been your testimony?
A **Yes.**
Q And I guess there is a lot of reasons that could have been the reason for the problems getting the veins; is that right?

A **We hit the veins. We just couldn't sustain them.**
Q As to whether or not Mr. Broom was hydrated or dehydrated or whatever on September the 15th, you have no knowledge; is that correct?
A **No knowledge.**
Q And when you say a hydration issue then, you are talking purely and solely speculation; correct?
A **Speculation from what the medical team talked about, that that's a possibility.**
Q Sure. A lot of things might have been a possibility; correct?
A **Yes.**
Q The issue of this protocol that you had in front of you, Warden, from May of 2009, I guess the issue of people having problems with the their veins peripherally and getting access and all of that -- I mean, that is not something that is unheard of; is that correct?
A **I am sure that is not unheard of. It happens in hospitals and any medical setting.**
Q It probably happens all the time?
A **I am sure it does.**
Q If you are in a situation here at this prison

when you are trying to execute someone peripherally and you can't get access after 15, 20 attempts, your protocol calls for no contingency plan whatsoever; is that correct?
A **As it stands right now, that is correct.**
Q That this prison has had, at least since Mr. Broom has been here and since lethal injection has been a method of execution in Ohio, years and years and years and years to get to a point where it could address that contingency, if necessary; is that correct?
A **That's correct.**
Q And as of the time Mr. Broom arrived here on September 15, 2009, that issue has not been addressed; is that correct?
A **That's correct.**
Q Now, you said that you didn't think we had a big incident that day. Is that your testimony or did I mishear you?
A **I think that's your wording. It was an incident. What I had said about that is I think in the Clark case I wasn't here, but I actually think that he was on the table, as far as I understand it. This case here, we made the attempts in the holding cell to insert an**

IV and it didn't work.
Q So you don't think that's a big incident?
A **It is significant enough that we called the execution for that day off.**
Q But as far as Mr. Broom is concerned, do you think it was a big incident to him?
A **Yeah. I am sure it was.**
Q Yeah. And is there any difference between what happened to Mr. Clark and what happened to Mr. Broom, at least up to the point where the IV was infiltrated in Mr. Clark's case?
A **You know, I can't answer that because I wasn't here.**
Q Both men, you will agree, were brought to this prison to be executed; correct?
A **That's correct.**
Q Both men had death warrants read to them; is that correct?
A **That's correct.**
Q Both men had the medical team come in and begin the process by trying to put IV lines into their bodies; correct?
A **Yes.**
Q All right. And the only difference with Clark, at least up to the point where the IV actually

bulged that first time, is that he actually had to go a few feet more and lay down on the bed; is that correct?
A **Yes, as far as I understand. Like I said, I wasn't here.**
Q Now, you have said a number of times that you didn't think they were ever able to get a vein that day. Has that been your testimony?
A **They hit veins frequently when I was watching, but they couldn't sustain. As soon as they had the saline, the vein would bulge.**
Q Okay. Did you ever observe that happen?
A **Yes.**
Q How many times?
A **Probably four or five on the left arm.**
Q That would have been in the first ten minutes or so?
A **Probably first 30 minutes, when Team Member No. 9 had to go out and then 17 stepped in. I saw it happen several times when he was making an attempt, also.**
Q Did you observe that Team Member 21 on the right arm actually did get an IV going and had the bag set and ready to go. Did you observe that?

A **Yes.**
Q What do you recall about that?
A **I don't know if the IV came out or what happened with it, but he had to reset again.**
Q Okay.
A **I couldn't see it.**
Q Have you been told that the IV -- that the catheter was pulled out of the vein by the security team member who yanked on the tubing when he was hanging up the bottle?
A **No.**
Q You haven't been told that?
A **No.**
Q Okay. Because that's been the testimony. Now that I am telling you that, that would indicate that at least one IV was started and apparently ready to go but one of the security team members pulled it out?
A **Could be.**
Q Okay. But nobody told you that that day --
A **No.**
Q -- is that correct?
A **No.**
Q So your, I guess, notion that none of these -- that all of these veins were popping, at least

it doesn't apply with respect to that incident; correct?
A **I really can't say it does apply to it because I don't know.**
Q Okay. Are you telling me that as the Warden of this prison with all of this litigation going on about lethal injection, and then with Mr. Broom's case and all of the attention that that received, that you have no idea what alternative procedures are being considered?
A **I told you that I know that we are looking at the IO.**
Q And that's the only one?
A **I haven't got any more information other than that right now.**
Q Have you been told that you are not allowed to talk about that with us?
A **No.**
Q So you are telling me under oath today that the only thing that you have heard about is IO?
A **We were discussing IO about three or four months ago.**
Q Okay. What about recently, are you discussing anything else?
A **IO.**

Q Still today?
A **Yes.**
Q So that's still on the table, as far as know?
A **As far as I know.**
Q It has not been rejected; is that correct?
A **I heard that it may be rejected.**
Q What do you mean, you heard that it may be rejected?
A **As I understand it, in talking with Mr. Voorhies, that that may not be a viable option.**
Q Okay. Why? Did he tell you why?
A **I think there was -- I think there was some concern, and we haven't really talked with the professionals as to whether you can deliver this drug protocol through an IO.**
Q Um-hum. (Affirmative) But you are not aware of any discussions about any other alternatives?
A **No.**
Q For getting, completing lethal injections?
A **No.**
Q Would your prison -- is your prison prepared to conduct an execution on October 8th?
A **I would say we are based what I have seen since I have been here. Other than Broom's case, we have been successful on the six I have been**

involved in. Broom would be the seventh one that went awry, where we couldn't start the IVs. And until you told me about the IV being pulled out by the security officer, corrections officer, I didn't know that.
Q That's significant to know that, though, because doesn't that change your perspective a little bit about what happened that day?
A **It does as far as -- we don't know if that vein would have held because did they get a chance to drip saline to it or did he pull it out before he even started the saline moving? I don't know.**
Q Well, he said he did the drop-bag test and that held.
A **Um-hum. (Affirmative)**
Q And he picked up the bag, handed it to the security officer to put it on the hook. The security officer grabbed the bag and pulled the tubing out the IV. That was the description by Team Member 21.
A **Okay.**
Q You have never heard that until today, I take it?
A **No. But the problem --**

Q Is that correct?
A **That's correct. But the problem I see, if that one would have held, we still would have needed a second one. Because I think after Clark we went to having two lines, one alternate line -- the primary line and the alternate line.**
Q Okay.
A **We still have to have two IVs hooked up.**
Q Do you think, as the Warden here, and having been here that day -- first of all, you witnessed Mr. Broom crying, I understand?
A **Yes.**
Q More than once?
A **No.**
Q But you did witness at least one time; is that correct?
A **Yes, I did.**
Q So he was obviously upset; is that right?
A **At the very end, yes, he was.**
Q And you will agree with me that up until that point and really throughout the entire process he was cooperative?
A **Absolutely.**
Q He was compliant; correct?
A **Yes.**

Q He was doing what he was told; correct?
A **Yes.**
Q He wasn't creating any problems; correct?
A **That's correct.**
Q And you, I think, testified that at least in your view he was ready to move forward and to die that day?
A **Yes.**
Q And then the process was called off; correct?
A **Yes.**
Q Through no fault of his own; correct?
A **That's correct.**
Q And have you given any thought now, as you sit here and as you have reflected over the last couple of weeks since that happened, about what kind of impact or what kind of experience that two hours must have been for him?
A **I thought about it because when we had the reprieve for seven days I thought what's going to be different seven days from now, especially after my team members mentioned that they don't think seven days is going to make a difference because of the way the veins were swelling every time we would introduce the IV or the saline drip. And so I had some concern about**

that, whether we could actually get it done on seven days later.
Q What about 100 days later? Would it be any different?
A **I wouldn't know. I wouldn't know if his situation changed.**
Q Which situation?
A **If he was dehydrated, if he became hydrated, I don't know. I would be speculating about that.**
Q But as to what the effect it had on him, you, I think would have to agree, that that two hours for him must have been extremely traumatic and emotional and draining; do you agree?
A **Oh, I agree. After the two hours, I think he was emotionally tired.**
Q And then the -- the thing about having to get ready to die, thinking you are going to die, then having to wait 15 minutes, an hour, two hours, and finding out, wait, you are not going to die today --
A **Um-hum. (Affirmative).**
Q -- that whole experience is something unlike anything you have ever seen before; is that correct?
A **That had to be emotionally draining, just like**

having an appeal sitting there and not having the answer back. Now the first day passed by, second day coming up, and here 11 o'clock in the morning learn that my appeal didn't work, now I am going to die. I think that would be emotionally draining, too, leading up to that process, I think that whole process would be probably be emotionally draining for somebody that has got an appeal pending, including that two hours that we were involved with him.
Q This is a little different. Now you have read the death warrant?
A **Yes.**
Q Now you have said to him we are ready to do it, all of the appeals are over, the process is now beginning; correct?
A **That's correct.**
Q That is something totally different. You don't have that with just appeals pending; right?
A **Yes.**
Q With Mr. Broom you started the process; is that correct.
A **Yes.**
Q You started sticking him in the arms with needles; is that correct?

A **That's correct.**
Q And he had no idea how that day was going to end except that he expected for it to end with him in the grave; correct?
A **Yes.**
Q And that whole experience is something totally unique for a human being to go through; wouldn't you agree?
A **Yes.**
Q And traumatic for a human being to go through; wouldn't you agree?
A **I would think.**
Q Would you, as a Warden, think it is appropriate to make a human being go through that experience again?
A **You know, I haven't given that any thought because my thought was we are going to have these depositions, he got his delay. I was actually -- just my thinking, this isn't going to happen November 30th, this is not going to happen any time in the next twelve months by the time this is litigated out.**
Q Okay.
A **I have got some time to think about this. We have got some time to develop a backup plan.**

Q Even if you have a backup plan, is it humane, in your view, to make a human being, Mr. Broom, go through an execution again after one attempt has been made and has failed?
A **Let me just say this. I have got a job that I have got to do that I am charged with doing, and I have to do my job to my ability. And what I am told to do, that's what I am going to do. And if the Supreme Court says we have a new execution date, then that's the date we will go with.**
MR. SWEENEY: I have no further questions. Thank you, sir.
THE WITNESS: Thank you.
RE-EXAMINATION
BY MR. BOHNERT:
Q I just have, again, I promise real quick questions. I thank you for your patience here and I know you're a busy man and you have got lots to tend to.
I'm curious, are the rehearsals that are conducted, recorded in any way, the execution rehearsals?
A **Yes. We do a timeline on those, also.**
Q Okay. But as far as any audio or video

recording of the rehearsals themselves?
A **No.**
Q Okay. So there is no recording device of any kind that is running during those?
A **That is correct.**
Q And is it also -- just to make sure I understand, is it also your testimony that you had no idea that there were venous access problems looming with Mr. Broom until when the IV team, the medical team, started to stick him after you read the death warrant?
A **Yes.**
Q So that information had never been conveyed to anybody on that?
A **I don't know if they actually knew about it until they got started.**
Q Okay. Now, you also testified about two lines and you said if -- well, even if the one arm had been started, the one that the needle got pulled out. You said even if that one was good, that was still only one and you need two. What did you mean by that?
A **After Clark, as I understand it, they used one line pre-Clark, used one line, one feed line, for the drugs to travel through.**

Q Okay.
A **After post-Clark, as I understand it, they went to the two-line protocol.**
Q So that is required that there has to be two lines?
A **I believe that that's a requirement now. It says "will establish primary and an alternate site." It's in the policy. That's the direction we have to go.**
And my concern would be going with one is if you blow it out and now you have got to do another hookup and try to find another vein.
Q Okay.
A **That's why I think it is written in the policy, have the alternate ready to go and have a viable vein on the alternate site.**
Q So is it your understanding that there -- that it is absolutely required by the written policy that there be two working viable IV sites?
A **That's correct.**
Q For an execution to continue at any point?
A **That's correct.**
Q Correct?
A **As our policy is written today, that's correct.**
Q Okay. And you are the Warden and you are the

one who is primarily responsible for implementing the execution policy or protocol; is that correct?
A **That's correct.**
Q Okay. So if a second line, the second line -- we get two lines, okay? We move to the death chamber, okay?
A **Um-hum. (Affirmative)**
Q If at any point one of those two lines becomes non-viable, does the process have to stop, in your view?
A **Let's say -- let's say if the primary line is ran, okay. If we have a blow-out in a vein or a swelling in the vein, under that table I have a switch where I can throw the light and we are going to stop right at this point. The medical team member is going to come out and assess that, double-check and making sure if we have a problem there. Then we would switch to the other site. We would not finish up -- if he is halfway into Drug 1, he has used one syringe and not Syringe 2, then on this site here we're not going to finish Syringe 2. We will go and re-introduce the protocol over again with A and B on this arm, we would go to the opposite**

side.
Q That's a little bit different than what my question is. My question is if any point you don't have two viable working IV sites, a primary and backup that are both working, if you come to learn that one of them is not working, under the protocol must you stop?
A **If he is already on the table and so on, and we have already introduced part of one, we are going to stop on that side and, like I said, we are going to go ahead and move forward from there. We want two hooked up, and policy calls for two hooked up when we start the process.**
Q So you would agree with me that if you don't have two that were hooked up and one of them is no longer working , you have to stop the process; correct.
A **We have to stop and go to the alternate site. That's why the alternate site is hooked up.**
Q Okay. So are you aware that a scenario has already occurred where the second line was not working for some period of time but the execution process was not stopped?
A **I don't know who you are talking about, which one.**

Q It is a little unclear on exactly which inmate it was and, you know, we haven't been able to find that particular name out. But we think it was during the Keene execution. There was testimony from a couple of different individuals that, at some point during one of the executions from Wilson-onward, that there was not two working lines for some period of time but the execution was not stopped. Were you aware of that?
A **Yes. I think you are correct. I think it was Keene. I think when they started introducing the medication there was resistance and they automatically went to the opposite side. Or they started introducing the saline and there was a resistance to the saline, so they went to the alternate site and used the alternate site.**

I think on him, I think we were saying he would receive it in the left arm, and I think he actually received the drugs in the right arm.
Q Okay. Actually that's a little bit different than what I am saying. I am saying that we have testimony to the effect that at some point in one of the recent executions -- and by

recent, I mean from that Wilson forward.
A **Sure.**
Q The executions under the current protocol. During one of those executions, at least, there came a point where there was not two working viable IV lines as the inmate was on the table in the death chamber, and the process was not stopped, there was no change made, nothing was done, the process plowed straight forward ahead. Are you aware of that?

MR. WILLE: At this point I am going to object to the form of the question. Assuming it's framed as a hypothetical as well as a leading question, I object because I believe the testimony indicated, that you are referring to, is that at some point one of the medical team members in the equipment room noticed that the secondary line may have had a difficulty in the flow. He noted that before he needed to correct it, the problem seemed to resolve by itself. That's my recollection of the testimony. And with that said, you may answer the question.

THE WITNESS: Okay. As I understand it, there was resistance, as I said

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earlier.
Q (By Mr. Bohnert) No. This is a different situation from what I think you are talking about.
A Okay.
Q I am asking were you aware of the situation that I explained to you and that Mr. Wille just described?
A I wasn't aware of it until we saw the flow coming from the opposite side that we thought the flow was going to come from.
Q Okay.
A In other words --
Q So, in other words, you are not aware of the incident that I am talking about, I guess?
A I am aware of it. I am aware of it, because when I say I am aware of it, it is kind of like after-the-fact. On Keene, we thought this would be the primary side on the left arm. And as it ends up, there was some resistance with the saline drip and it wasn't flowing. So that's why we use the two lines, and then they went to the right side and that's where the flow was delivered.
(Discussions were had off the record.)

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Q (By Mr. Bohnert) Okay. We are ready to go back on. I guess let me try to re-frame what I am talking about here.
A Okay.
Q I guess my question is, are you or are you not aware that there was a point in time during one of the executions, Wilson until now, during which the secondary line became non-viable, was not throw flowing for some period of time, we are not sure how long, but the process was not stopped?
A No. I think how that went, the primary line was to be the left arm, okay. They couldn't get the IV flow, as I understand it, to flow in the left arm. They went ahead and switched to the right arm, and that's why we do the two hookups after Clark. And then they automatically went to the left arm and they -- they had a saline drip that was flowing, and that's where the drugs were introduced into the right arm because I was -- we always tell each other left arm or right arm? Left arm is where we're expecting it to come and it came from -- to the right arm.
Q Okay. So you are not aware of any other

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incidents other than the one that you are describing where there was a change made from one arm to the other arm?
A No.
Q You are not aware of any other incidents where there was flow problems with one of the lines; correct?
A No. That's the only one I know.
Q That's what I am asking. You, as you sit here right now, are not aware that that has happened?
A No.
Q Correct?
A That's correct.
Q Is it fair that you would want to know?
A Yes.
Q Would the process have to stop if that were, in fact, the case?
A I'm guessing -- how far are you into it? Is this just saline drip? The only one I know about is Keene, so if you have got something else that I don't know about then it's a little hard to answer the question.
Q Well, I'm saying if in that situation, if one of the lines became non-viable -- if the backup

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line became non-viable, does the process have to stop because there now, at that point in time, not two possibilities?
A Well, I guess when you say the backup line --
Q The secondary.
A -- my assumption is if you are saying that the backup line became not viable, that means the primary line is also not viable. That's what I am understanding the question to be. Because we wouldn't use the backup line unless the primary line was not viable. We wouldn't use it. We would go with the primary line first. And if that doesn't work, we would go to the alternate line, the backup line.
So f they are on the backup line and it's not working, then we've already tried the primary and the backup and now we are stopping.
Q Just one second.
A Okay.
Q It is my understanding that there is saline solution flowing through the secondary line; is that correct?
A Primary and secondary.
Q So once we start injecting on the primary, okay, but if there is no longer saline flowing

through the other -- whether we want to call it backup, secondary, the other line -- if there is no longer saline solution flowing through that line, is that a point where the execution process has to stop?
A **And we have already started Drug 1 and we are already into it.**
Q You started injecting Drug 1 on this arm; okay? I mean, is that what you are saying?
I mean, you have already started using the primary line, you started inject Drug 1?
A **Okay.**
Q Okay. The other, secondary, backup, whatever term you want to use for it, the saline stops flowing through that line?
A **Um-hum. (Affirmative)**
Q Okay. At that point does the process have to stop?
A **Not if -- I would say no, because we have got two lines hooked up, and that's why we hook them up so we have an alternate site.**
If the saline is not flowing but where the drugs are being delivered is flowing fine, you wouldn't stop. You have got a good flowing line and you have got the drugs being

delivered.
Q But you don't know if that one might infiltrate; right?
A **You don't know --**
Q The one being used?
A **You don't know until actually the drugs are being pushed in. But if it's going to infiltrate, you will know it right away and you would know it pretty quick.**
Q Okay. So do I understand your testimony correctly then that it is okay to move forward with an execution with only one viable line?
A **It is because that's why we hook up two, and I have said that several time now. After Clark, we went to two lines. If one doesn't deliver, we go to the alternate line.**
Q But in this case there is no alternate line, I guess is what I'm saying, and I'm understanding your testimony, that it's okay to move forward without a backup alternate line?
A **Now, is this a hypothetical or is this what you say happened, because I guess --**
Q There has been testimony that this has happened.
A **Okay. I'm not aware of that.**

MR. WILLE: I'm going to object to that because there has been no testimony that, in fact, the secondary line failed after the drugs began administration.
My recollection of the testimony is that No. 17 testified that in one instance, probably the Keene execution, he noted that the secondary line appeared to have a problem with the saline flow, that before he could call it to anyone's attention or take a step, the problem seemed to correct itself. But I don't believe he testified that that occurred while the first line drug was being administered. Now, that's my recollection of the testimony.
MR. BOHNERT: And I guess, for the record, let's put on there that there was testimony on three different instances in depositions here about that particular incident because No. 17 has testified about it twice and No. 21 has testified about it once. So I guess that's all I am asking is, at that point would not the execution have to stop?
THE WITNESS: No. No.
MR. BOHNERT: Okay. I don't believe that I have any other questions. Do

you?
RE-EXAMINATION
BY MR. SWEENEY:
Q Just a couple. On this Keene thing -- I'm sorry Chuck, I'm sorry, Warden -- but is it your testimony that on Keene that there was a switch from one line to the other at some point in the process?
A **Yes.**
Q In other words, you were going to -- I think you said it many times. You were going to start on the left that day but it ended up the right that was used?
A **That's correct.**
Q The left would be the side closest to the victim's window -- or the windows that the witnesses would be there watching; right?
A **Correct.**
Q The right would be the side closest to where you were standing?
A **Yes.**
Q So on that particular execution, was that Mr. Keene?
A **Yes.**
Q On that particular execution you were going to

use the arm closest to the window where the witnesses were; right?
A Right.
Q But wound up using the arm closest to you, the Warden; correct?
A Yes.
Q And in connection with that switch, did you utilize the light signaling device that is called out in protocol?
A No.
Q Why not?
A Because we had the IV flowing, the drugs coming to the opposite arm. Obviously, in the equipment room there was a reason they did that, and you could see the liquid moving through to the right arm and it was flowing properly. I was watching this arm very closely at that point. (Indicating)
Q You were watching the right arm closely?
A Right arm. Right arm. I was watching it closely and the flow was coming. He was unconscious or asleep within five, ten seconds, and the drugs continued. All of the signs that we see in the chamber. He was unconscious, and during my unconscious check, he was and -- but

I was thinking it was coming to the left arm but it actually did come to the right arm.
Q At any point during the Keene execution were drug delivered into the left arm?
A No.
Q And how do you know that?
A Just from what my medical team told me, that there was a little issue with the saline drip so they went to the other arm. They weren't getting the flow that they thought was appropriate and then they went to the other arm.
Q And this is what they told you?
A Yes, sir.
Q Who in particular, numbers?
A 17.
Q 17 told you this?
A Yes.
Q After-the-fact?
A After-the-fact.
Q That very day.
A Yes. Because we -- I questioned him. I think even the Major questioned him on we thought you were going to the left arm, and that's when we learned about there was this -- the saline flow

wasn't flowing properly and then later on it did. But that is actually their call in there. I am not in that room. So if they are having an issue with one side, then go to the alternate side.
Q But isn't there a whole process that you are supposed to follow if you switch lines? Isn't that called out now in the protocol?
A Actually, that's why both lines are hooked up. We have both lines attached in there into the room.
Q Okay.
A And if they have resistance on one side then they move to the other side.
Q Isn't there supposed to be a lighting mechanism? Are they supposed to employ some way to let you know that?
A No. The lighting mechanism is for me to let them know if we see an infiltration on the floor, out in the death chamber itself. That's my way of letting them know quickly that we have got a problem in there and they need to come out and take a look at it right away. Stop, come out and take a look at it.
Q Okay. So your understanding of this Keene

execution is that they were going to start on the left but evidently never did; is that right?
A That's correct.
Q And they chose not to start on the left because of a problem with the saline drip feeding into that line; correct?
A Yes.
Q And so they made the decision to start on the right arm, closer to you; correct?
A Yes, that's correct.
Q And you -- and you didn't know that until when? When did you first realize that they had switched arms?
A When the drugs were actually being delivered.
Q And how did you know?
A Well, you can see the -- there is a little color change in the saline from the first drug. It delivers at a little -- about like water and milk together. It delivers it in a different color form. And you can actually hear -- you can actually sit quiet and you can actually hear the drug being delivered and you can hear which line it is being delivered in and see it.
Q So you were expecting to see it in the left

and you are looking and it is not coming in the left; right?
A **No. We heard it coming into the right arm and we could see it coming into the right arm.**
Q Right. But you were expecting it to come in the left?
A **That's correct.**
Q And you were, I imagine, looking in the left, looking, looking and it's not coming, and then you hear it and you see it coming in the right; right?
A **Yes, that's correct.**
Q Was it your understanding that the left on that day, for Mr. Keene, the left arm closest to the window that the witnesses will be watching, that that's supposed to be the primary line that day?
A **Yes.**
Q Who made that determination?
A **Once they are inserting the IVs in the holding cell, I think between Team Member 17 -- and it might be 17 or 9 or whoever, one of the three in there, say they have got a IV flow on this side and they have a good IV flow on this side. They make a decision which one would be the**

primary and which one is accepting the drip.
Q Okay.
A **A little faster than the other one probably?**
Q Okay. So they try to decide which one is the better flow?
A **Yes. That's correct.**
Q And decision that take was that left arm has the better flow?
A **That's correct.**
Q So it was told to you that the left arm was going to be the primary line; correct?
A **Yes.**
Q And that was your expectation when the execution started?
A **That's right.**
Q You stood there after the man gave his last words; right?
A **Yes.**
Q You were expecting the process to begin on the left arm; is that correct?
A **That's correct.**
Q And evidently you saw no evidence of it beginning in the left arm; is that correct?
A **That's correct.**
Q Did you see any flow in that left line?

A **The saline is pretty clear coming through. It's a steady flow, and I didn't see any disruption. I am on his right side and I'm looking, but I don't see any disruption. I just hear and see the drug moving through on the right side.**
Q Let's assume -- let's assume there was a disruption there, though, on the right -- on that left line before the process began. In other words, before he actually started the drug flow; okay?
A **Um-hum. (Affirmative)**
Q Did -- I mean, you really at that point are in no different circumstance than you would be if he were in the holding cell and only have one line; right? You really only have one line?
A **I disagree with you.**
Q And why is that?
A **Because the policy says we will establish two lines going in and that's what we do. That's why we do it.**
Q They have to be two working lines; is that correct?
A **Yes.**
Q And if one of them is identified,

hypothetically, as not working before you even begin to administer the drugs -- okay, let's assume that's the case.
A **Um-hum. (Affirmative)**
Q Then you are beginning the process with only one line; correct?
A **Actually -- I don't know what the other folks testified to. I am not in there. But, hypothetically, you are saying that the one line -- the one line is blocked up. I had no idea that it was blocked up and then started flowing.**
Q Okay. Right.
A **I couldn't even tell you if they started introducing the actual injections prior to they got the flow on the right arm again and it started working again. I don't know. I wasn't in there.**
Q I understand that. I am just trying to understand what you -- I mean, you are the boss, really, and I am trying to understand what you think the process should be. And if you have a situation where you are in the Death House now, the process has gone so far as the guy has been strapped down and the IVs have

been inserted, you know, you are well into the process now, and now you are ready to begin administering the drugs.
A **Um-hum. (Affirmative)**
Q And if at that point it is determined before the drugs are actually started that one of the lines is not working -- okay, let's just assume that's the case, all right -- wouldn't it be true that, under the policy, you should stop and get that second line working before you even start. Correct?
A **Let me answer it -- let me go ahead and answer it this way. If that medical person in that room delivering the drug didn't have a second line that actually opened back up -- I don't know what they testified to. I haven't talked to them about it. Obviously, that line had to open back up and start flowing again or they wouldn't have started.**
Q I think we're saying the same thing.
A **That medical team member can -- I just need to say this. A medical team member can also stop it. They can also come out and come out to me and say we have got a problem.**
Q Right. I hear you. But so just so we are

clear, if you've gone through the process of already inserting the IVs, the lines have started, the man has been brought to the execution chamber, the last words have been red, and the IV -- and the drugs are ready to be administered, if at that point it becomes clear that one of the lines is not working and before the drugs have been started, you would agree, would you not, that at that point the process must stop and that second line must be re-established; correct?
A **I can't say yes on that.**
Q Why not?
A **That's why we hook up both lines. You know, if we have a failure -- we won't know we've had a failure until he is on the table and we've actually started the IV drip. And in this case the IV drip didn't take. But then whatever judgments they made or it just started taking the saline, they've chosen, instead of taking the chance on that line that indicated that there could be a problem, maybe not a problem, but they went to the alternate side. That's why we have that in the policy, having both of those lines hooked up because of that reason.**

Now, if we had a collapse in the one line where it wouldn't accept any IV fluid and then when we started to introduce IV to the right side and it won't take, we can't go any farther. We have got to stop and re-establish both lines.
Q And that's because both don't work, correct?
A **That's correct.**
Q I guess what I am hearing say, then, then that it is okay to start. I guess you are saying that it's okay for the medical team to start to administer the drugs to the inmate laying there on the table, even if at the time they start to administer the drugs they know that one of the lines has already failed; is that your testimony?
A **I think what you are asking me is --**
Q Is that your testimony?
A **I am going to go ahead and answer this, okay.**
Q Okay.
A **I think what you are asking me is a hypothetical.**
Q Maybe so. Maybe so. But I want you to answer that hypothetical. Do you want it read back? Is it your testimony that if the medical team

is in there, the process -- the administration of the drug, that part of the process hasn't yet begun, they haven't started to administer the drugs yet. Everything else has been done but they are ready to start that. They haven't started yet and it becomes apparent to them, through however means they may have available to them, that one of the lines have failed?
A **Before we even got started?**
Q Before they started to actually administer the drugs.
A **Okay.**
Q Is it your testimony that it is nevertheless okay for them to begin on one of the lines?
A **At this point I will say yes.**
Q And that would be true even though they know one of the lines is not going to work that day; correct?
A **That's correct.**
Q So it is okay for them to start with only one working line; correct?
A **That's why we hook up the two lines, in case one doesn't work.**
Q But that's your reading of the protocol, I guess; is that right?

A That's correct.
Q That's how you would apply it?
A That's correct. That's how I interpret it and that's how I see it.
Q So then in that event they start with that one working line and the other has already failed, they know that, and they administer that first drug; okay?
A (The witness nodded affirmatively.)
Q It gets in and the inmate is rendered unconscious by the sodium thiopental, at some point that IV fails in some way, okay, and you are already into the pancuronium bromide; what do you do?
A We have to try to establish a second line real quick. That's why we move ahead with Broom. We don't want a medical emergency out there on the table, and that would be a full-blown medical emergency at that point.
Q Okay. But wouldn't it be more prudent to say to your guys, I don't want you starting if you know one of the lines has already failed, you have got to make sure they are both working before you start; right?
A As I understand your question, you are asking

me a hypothetical.
Q Okay.
A I have no knowledge that we have had that happen.
Q I am not saying you do. I am asking you -- I guess it could be a hypothetical. It may very well be that?
A Let me say this to answer your question a little more fully and so there is a little more understanding. I can call it off out there, stop, we need to switch sides. They can also call it off. They are the medical professionals making the delivery.
Had they probably not got that flow going again on that first arm, it wouldn't have started. I would guess if 17 is delivering the drugs, he is going to be walking out there and telling me I have got a problem, I don't have an IV flow on the right side or left side, either/or.
He is not going to start until we have got a flow on both sides and that's pretty much how it's going to go.
I mean, the idea of having this second line is we have delivered Drug 1 and now we

have an infiltration, so we have reintroduced Drug 1 on the opposite side, it might be the left side, and we re-introduce Drug 1 and then go to 2 and so on, as the protocol calls for. But he is not going to start that process until he has a flow on both lines.
Q Okay. I think that's a little different than what you said before. So is it your testimony now that if the medical members are ready to administer the drugs and they notice that one of the lines is not working because of improper flow or whatever the reason maybe, is it your testimony that they are not supposed to start the process until that -- until that line that they notice is having problems is fixed?
A That's correct. And as I understood your question before, and I didn't change my testimony -- as I understood your questioning me before, we were actually into the delivery process, as I understood it before.
If we haven't even started and there is a problem, then they need to stop right there and let me know that they have got a problem before they ever get started. I guess I didn't understand the question before, maybe. There

has been so many of them today about the same thing. You know, I just want to make sure we are clear on that. If it doesn't get started -- if it's not -- if the lines are not accepting saline, then they are not going to start the process.
Q If both aren't accepting saline?
A Either/or. If both or one isn't, we probably won't start that process of drug delivery from the equipment room.
Q I think I understand.
A I don't know how you asked it before, and I was assuming that we have already got a drug flow going.
Q Okay.
MR. SWEENEY: I have no other questions.
MR. BOHNERT: Last two questions. I promise. Unless there is follow-ups.
THE WITNESS: Okay.
MR. BOHNERT: Let's go off the record here for a second.
(A recess was taken at this time.)
RE-EXAMINATION

BY MR. BOHNERT:
Q All right. Let's go back on the record. It's my understanding that the protocol has required training elements in it; is that correct?
A **Yes.**
Q The written policy?
A **Yes.**
Q Okay. And for anybody to actually not go through that training would be a problem; correct?
A **Yes.**
Q Okay. And are you the one who would make the call on whether it's okay for someone to miss training?
A **Yes.**
Q Okay. Are you okay with members of the team missing training and then participating in the execution for that particular --
A **Well, if you are talking rehearsals, I am okay with that. If you are talking training, there is a little bit of difference. Okay. Training is actually a training session where we're learning something about IV insertion or infiltration or something like that. If it's a rehearsal, I don't have a big problem if**

somebody has got another commitment and can't make it, and we have had that happen several times.
Q Okay. But the rehearsals are required under the protocol?
A **Yes.**
Q And protocol, if I recall, require that rehearsal training; is that correct?
A **That's correct.**
Q Okay. But it's your testimony that it's okay for someone to participate in an execution if they have not participated in the rehearsal for that execution?
A **That's correct. I missed one. I was on vacation.**
Q And on what basis do you make -- where do you draw your authority for that, what appears to be a decision to waive the rehearsal requirement for that person?
A **Well, I guess if you're talking about -- I will just run the scenario for you. If you are talking about the security staff, they rotate jobs. If a security staff member is on vacation, I am not going to require to stop his vacation, or her vacation, and come in and run**

through a rehearsal that they have already done four times before the execution and 120 times since they have been working the process.

It's a rehearsal, not much changing. One rehearsal we might have everything going okay and then next rehearsal might be we have to use force, whatever. So they have been through the whole scenario. So if that person has got 20 years in or has been on the team for five years or six years and has a vacation, I am not going to have them cancel it.

I guess it's that leadway I have in this protocol to say, okay, it's a rehearsal, you don't have to be here.

If it's training and we are actually doing a training session, yeah,I want them to be here. And we will try to schedule it so that nobody is on vacation and we can do that training on that day, and we have the team members there. And then --
Q Go ahead.
A **And then the other part of it is, I think Team Member No. 21 has missed a couple because of an ACA audit. And then he was actually training people at the Corrections Training**

Academy, as I understand it, in IV access and so on. For the one session he was at CTA. He is doing the same thing there that he does here. And so for me to give him the excuse not to be at the rehearsal, I think, is a good sound call because he is practicing down there what he does up here.
Q Okay.
A **Different application but same process.**
Q Okay. So it is your testimony that missing training that is required under the protocol in some instances is okay and that person can still participate in the execution?
A **In this case here, yes.**
Q In this case, meaning?
A **In the context of the way you put the question to me, if they miss a rehearsal, I don't have a big problem with that, as long as I know what they are doing. In this case, No. 21 was actually teaching at the academy, the same thing that he does here, as far as IV access and so on.**

So I don't have a real problem with that because he is going to get more practice there in that eight hours and more teaching there in

eight hours than he would get here in an hour-and-a-half. So I don't see any issue with that at all.
Q Okay. Is it a problem or not if members of the IV team have not been present for the IV training, I mean, you previously testified that the training is important, and that would be a different scenario? Is it a problem for participation on the execution team if IV members, for example, have not been present for the IV training?
A If you are talking about Team Member 21 not being present when we had that --
Q Just in general. Just in general.
A I am going to answer the question as I need to answer here. No. 21 wasn't present during our IV training. When Ramon Perez came down here and did our IV training for us, he wasn't present. He trained Ramon Perez himself. So do I see that as a real problem? No, I don't.
Q Okay. But the protocol, you will agree, does not distinguish between making a special exception for Member 21 or anybody else; correct?
A That's correct.

MR. BOHNERT: Okay. I think that's it.
MR. SWEENEY: Thank you, Warden.
MR. BOHNERT: Believe it or not, all done.
(The deposition concluded at 6:46 PM.)
(All exhibits retained by counsel)

STATE OF OHIO :
COUNTY OF ROSS : SS:

I, Jennifer L. Berry, Registered Professional Reporter and a notary public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named Warden Phillip Kerns was by me first duly sworn to testify to tell the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition then given by him was by me reduced to stenotype in the presence of said witness, afterward transcribed by computer; that the foregoing is a true and correct transcript of the deposition so given by him; that the deposition was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by an attorney or party hereto, or financially interested in the outcome of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office in Chillicothe, Ohio, on this 8th day of October, 2009.

My commission expires
February 21, 2011 ____________________
JENNIFER L. BERRY, RPR
NOTARY PUBLIC IN AND FOR THE
STATE OF OHIO

STATE OF OHIO :

COUNTY OF ROSS : SS:

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My commission expires
February 21, 2011

JENNIFER L. BERRY, RPR
NOTARY PUBLIC IN AND FOR THE
STATE OF OHIO

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